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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re: LAS VEGAS LAND PARTNERS, LLC, <div style="text-align: right;">Debtor.</div>	Case No. BK-S-19-15333-MKN Chapter 7 MOTION TO ANNUL STAY TO VALIDATE STATE COURT JUDGMENT Hearing Date: April 13, 2022 Hearing Time: 2:30 p.m.
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RUSSELL NYPE and REVENUE PLUS, LLC (collectively, “Nype”), by and through their counsel, Lenard E. Schwartz, (Nype is sometimes referred to as “Movant”) hereby move this Court to annul the automatic stay in this case to eliminate the question whether the Amended Findings of Fact and Conclusions of Law (“Judgment”) entered January 17, 2020 by the Nevada District Court (the “State Court”) in Case No. A-16-740689-B (the “State Court Litigation”) violated the automatic stay in this case. The reason for annulling the automatic stay in this case is to eliminate an issue concerning the validity and preclusive effect of the Judgment entered by the State Court.

It appears that all parties in this bankruptcy case and in the State Court case assumed that the employment of counsel by the Trustee and the intervention of the Trustee in the State Court Litigation *as a plaintiff* eliminated the need for an order lifting the stay in this case. In the pending bankruptcy case of Liberman, one of the defendants in the State Court Litigation, Nype filed a complaint objecting to the discharge of the judgment issued in the State Court Litigation. The Bankruptcy Court for the Eastern District of New York has taken the opposite position and questioned the validity of the Judgment issued by the

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1 State Court in favor of the Nype and the Shelley D. Krohn (“Trustee Krohn”), the Trustee
2 in this bankruptcy case.

3 FACTS

4 1. LVLP filed a voluntary petition for relief under Chapter 7 of the Bankruptcy
5 Code on August 19, 2019 (the “Petition Date”). [ECF 1]. Trustee Krohn is the duly
6 appointed and acting Chapter 7 Trustee. [ECF 2].

7 2. Prior to the Petition Date, Russell Nype and Revenue Plus, LLC
8 (collectively, “Nype”) obtained a judgment dated April 10, 2015 against LVLP issued by
9 the Eighth Judicial District Court in Case No.07-A-551073. After an appeal to the Nevada
10 Supreme Court, on Amended and Final Judgment on Costs dated November 1, 2018 was
11 issued. Currently, the amount due on the two judgments is approximately \$4,500,000.

12 3. Prior to LVLP’s Petition Date, on July 26, 2016, NYPE sued the Debtor,
13 David J. Mitchell; Barnet Liberman; Las Vegas Land Partners, LLC; Meyer Property,
14 LTD.; Zoe Property, LLC; Leah Property, LLC; Wink One, LLC; Live Work, LLC; Live
15 Work Manager, LLC; Aquarias Owner, LLC; LVLP Holdings, LLC; Mitchell Holdings,
16 LLC; Lieberman Holdings, LLC; 305 Las Vegas LLC; Live Works TIC Successor, LLC;
17 PC/Live Work Vegas, LLC; Casino Collidge, LLC (collectively, the “Co-Defendants”) in
18 the State Court Litigation.

19 4. In the State Court Litigation and in the prior litigation, the Muije Firm
20 represented Nype.

21 5. In the State Court Litigation, Nype alleged (a) he was entitled to a
22 constructive trust on property of the Co-Defendants; (b) he was entitled to avoid fraudulent
23 transfers of real property by the LVLP and Co-Defendants; (c) LVLP and Co-Defendants
24 had conspired to defraud Nype; (d) he was entitled to a declaration that the transfers of real
25 property by the LVLP and Co-Defendants were void; and (e) he was entitled to a
26 declaration that the Co-Defendants were the alter egos of the LVLP and their assets could
27 be used to pay the debt to Nype.

28 6. The filing of LVLP’s petition automatically stayed the State Court Litigation

1 against the LVLP and the prosecution of the fraudulent transfer action and alter ego claim
2 which is property of the LVLP bankruptcy estate.

3 7. In the LVLP Bankruptcy Case, Trustee Krohn filed the Application to
4 Employ John W. Muije & Associates as Special Counsel on a Contingent Fee Basis Under
5 11 U.S.C. §327(a). [ECF 28].

6 8. In this Application, the Nevada Bankruptcy Court was informed:

7 6. The filing of the debtor's petition automatically stayed...(b)
8 the prosecution of the fraudulent transfer action which is property of the
9 Debtor's bankruptcy estate.

10 ***

11 13. The Muije Firm agrees to turn over to the trustee fifty percent
12 (50%) of all funds and assets collected or recovered from the defendants
13 attributable to any claims litigated in the State court Litigation

14 14. The professional services rendered by the Muije Firm will be
15 limited to representation of the trustee in recovering the fraudulent transfers
16 as to which the Debtor's bankruptcy estate claims an interest and are claims
17 asserted in the pending State Court Litigation.

18 9. In the LVLP Bankruptcy Case, the Declaration of John W. Muije in
19 Support of Application to Employ John W. Muije & Associates as Special Counsel
20 was filed. [ECF 29].

21 10. In this Declaration, Mr. Muije states:

22 12. 50% Of any funds and assets collected or recovered from the Co-
23 Defendants by the Muije Firm in the State Court litigation... will be turned
24 over to the Trustee.

25 13. The professional services rendered by the Muije Firm will be limited
26 to representation of the trustee in challenging the fraudulent conveyances as
27 to which the Debtor's bankruptcy estate claims an interest and are claims
28 asserted in the pending State Court litigation.

11. In the LVLP Bankruptcy Case, the Declaration of Shelley D. Krohn in
Support of Application to Employ John W. Muije & Associates as Special Counsel was
filed. [ECF 30].

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12. In this Declaration, Trustee Krohn stated:

“13. I have required that 50% of any funds and assets collected or recovered from the Co-Defendants by the Muije Firm in the State Court litigation (except for the previously awarded discovery sanction) will be turned over to me as trustee.

17. I have been informed that the Muije firm will continue to represent Nype with respect to all claims other than the recovery of fraudulent transfers, and because of the agreement between the trustee and Nype, 50% of the recovery and funds collected from the Co-Defendants will not belong to Debtor’s estate (“Non-estate Property”).

23. In my business judgment, it is in the best interests of the debtor’s bankruptcy estate to employ the Muije Firm on a contingent fee basis to pursue the bankruptcy estate’s claims against the Co-Defendants.”

13. Based upon these documents, this Court entered the Order Granting Application to Employ John W. Muije & Associates as Special Counsel on a Contingent Fee Basis Under 11 U.S.C. §327(a). [ECF 35].

14. The record of the State Court Litigation shows that the fraudulent transfer claims and alter ego claims belonging to the LVLP Bankruptcy Estate were prosecuted on behalf of Trustee Krohn.

15. Trustee Krohn moved to intervene in the State Court Litigation as a plaintiff. Shelley D. Krohn, Trustee’s Motion to Intervene attached hereto as Exhibit “A”.

16. The State Court entered an Order Granting Trustee’s Motion to Intervene attached hereto as Exhibit “B”.

17. Trustee Krohn filed her Complaint in Intervention attached hereto as Exhibit “C”.

18. The Complaint in Intervention shows that the alter ego allegations were prosecuted on behalf of Trustee Krohn and the LVLP Bankruptcy Estate. See paragraphs 84 through 97 and 136-137 of the Complaint in Intervention.

19. The Complaint in Intervention shows that the fraudulent conveyance allegations were prosecuted on behalf of Trustee Krohn and the LVLP Bankruptcy Estate.

1 See paragraphs 106 through 111 of the Complaint in Intervention.

2 20. The pleadings filed by Trustee Krohn's counsel include Trustee Krohn as a
 3 Proposed Plaintiff in Intervention in the caption.

4 21. As a result of trial by the Nevada State Court, on January 17, 2020, the
 5 Judgment was entered against Liberman and his co-defendants. A copy of that Judgment is
 6 attached hereto as Exhibit "D".

7 22. The Muije Firm collected approximately \$400,000 from one of the Co-
 8 Defendants-Casino Coolidge, LLC.

9 23. Subsequently, the Muije Firm turned over 50% of the funds collected from
 10 Casino Coolidge, LLC to Trustee Krohn¹, applied for fees and costs and was awarded fees
 11 and costs by the Nevada Bankruptcy Court from the assets of the LVLP Bankruptcy
 12 Estate. See First Interim Fee Application Of John W. Muije & Associates For Allowance
 13 of Compensation for Services Rendered As Special Litigation Counsel During Period
 14 From November 1, 2019 Through April 30, 2020 And For Reimbursement Of Expenses
 15 Pursuant To 11 U.S.C. §§330 And 331 And Federal Rule of Bankruptcy Procedure 2016,
 16 [ECF 63], and Order Granting First Interim Fee Application Of John W. Muije &
 17 Associates For Allowance of Compensation for Services Rendered As Special Litigation
 18 Counsel During Period From November 1, 2019 Through April 30, 2020 And For
 19 Reimbursement Of Expenses Pursuant To 11 U.S.C. §§330 And 331 And Federal Rule of
 20 Bankruptcy Procedure 2016. [ECF 76].

21 24. More than a year after the entry of the Judgment, on April 1, 2021, one of the
 22 defendants in the State Court Litigation, Barnet Louis Liberman ("Liberman") filed a
 23 petition for relief under Chapter 11 in the United States Bankruptcy Court for the Eastern
 24 District of New York (the "NY Bankruptcy Court").

25 25. Liberman's bankruptcy case was converted to a case under Chapter 7.

26 26. In the NY Bankruptcy Court, Nype filed a Proof of Claim based on the debt
 27 _____

28 ¹ These are the only funds in the possession of the Trustee.

1 awarded by the Judgment and filed an adversary objecting to the discharge of the debt
2 awarded by the Judgment.

3 27. In the adversary, Nype filed a Motion for Partial Summary Judgment based
4 on the Judgment.

5 28. The NY Bankruptcy Court has raised issues concerning the validity and
6 preclusive effect of the Judgment. In its Memorandum Decision And Order Denying Motion For
7 Partial Summary Judgment, a copy of which is attached as Exhibit “E”, that court stated:

8 “Based on the record before it today, the Court cannot give any
9 preclusive effect to the Nevada Judgment. The Court cannot find, based on
10 the current record, that the Nevada Judgment is a valid and enforceable
11 judgment. The litigation commenced by Nype, which resulted in the Nevada
12 Judgment, was commenced in aid of collecting on Nype’s prior judgment
13 against LVLP, the LVLP Judgment (“Collection Litigation”). Subsequent to
14 commencement of the Collection Litigation, but prior to entry of the Nevada
15 Judgment, LVLP filed for relief under chapter 7 of the Bankruptcy Code.
16 LVLP was a named defendant in the Collection Litigation. Upon LVLP’s
17 bankruptcy filing, the fraudulent conveyance claims asserted in the
18 Collection Litigation became property of the LVLP estate. The Collection
19 Litigation continued as against all defendants except LVLP, and the LVLP
20 chapter 7 trustee intervened as a co-plaintiff with Nype as the proper party to
21 assert the fraudulent conveyance claims on behalf of the LVLP estate.

22 In a recent decision, the Bankruptcy Appellate Panel of the Ninth
23 Circuit found that “postpetition prosecution of a fraudulent transfer claim
24 against nondebtor parties violates § 362(a)(1).” *Koeberer v. California Bank*
25 *of Commerce et al. (In re Koeberer)*, BAP No. NC-21- 1078-FBS, Bk. No.
26 20-110514, 2021 WL 5371142 at *1 (B.A.P. 9th Cir. Nov. 18, 2021). If, in
27 fact, the Nevada Judgment was entered in violation of the stay imposed by
28 the LVLP bankruptcy filing, when it cannot be given collateral estoppel
effect here.

The Motion is denied without prejudice.

***”

28 28. Nype and Trustee Krohn disagree with NY Bankruptcy Court’s
analysis but have no economical means of review because there can be no appeal
from a denial of a motion for summary judgment.

29 Subsequently, in a response to a Motion to Lift Stay Re Nevada
Bankruptcy seeking to lift the stay in the Liberman bankruptcy case, a copy of

which is attached as Exhibit “F”, the NY Bankruptcy Court stated:

But to the extent the argument is it was stayed at the time, **I'm going to rule there was no stay in place**, so therefore, he can go back to New York and that argument is off the table, which leaves us pretty much exactly where we are today. Now if they want to do that, it's a free country, you know, okay.

The only issue in Nevada is whether or not there was a stay in place; if there was, whether it was lifted. **And I don't know what that stay is on, therefore, I can't tell them not to do it. I don't think there's a violation of the stay on the papers that's in front of me.** Now if somebody had raised the question that the damages from the lifting of the stay that we had today, therefore a reason not to send it back, I'm not sure, but nobody raised it. The trustee was the only one; he's not doing anything on this. So I don't see what the issue is here. I really don't. I think there's a lot of energy, but you -- you're good lawyers, you're all good lawyers. If you believe that there is no stay, go back. I'm not finding it -- **I can't find any property of this bankruptcy estate that you'd be stayed from going back to Nevada reaffirming the original judgment.**

MR. SCHWARTZER: Your Honor, could you enter an order saying that the motion is moot because the stay doesn't apply?

THE COURT: Nope, because I don't have jurisdiction. I don't have jurisdiction. **There's no stay--**

See transcript, pages 20-23, attached as Exhibit “G”. No order has been entered.

DISCUSSION

Nype seeks an order annulling the automatic stay in this bankruptcy case in order to eliminate any argument that the Judgment is not valid and that the Judgment is entitled to be given collateral estoppel effect in other courts. In order to apply collateral estoppel to the Nevada Judgment, the judgment must be valid and enforceable. *See In re Dabrowski*, 257 B.R. 394 (Bankr. S.D.N.Y. 2001). Actions taken in violation of the stay imposed by § 362 of the Bankruptcy Code are void, not merely voidable. *See Motors, Inc v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 586 (9th Cir. 1993). The Bankruptcy Appellate Panel for the Ninth Circuit recently held that a creditor's continuation of a state court fraudulent conveyance action against non-debtor entities was a violation of the automatic stay, even

though the debtor was separated out from the action. *Koeberer v. California Bank of Commerce et al. (In re Koeberer)*, BAP No. NC-21-1078-FBS, Bk. No. 20-110514, 2021 WL 5371142 at *5-6 (B.A.P. 9th Cir. Nov. 18, 2021) (citing *FDIC v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125 (2d Cir. 1992)). There is no order granting relief from stay to allow the Collection Litigation to proceed. In light of this fact, the New York Bankruptcy Court could not find that the Nevada Judgment was a valid and enforceable judgment entitled to collateral estoppel effect.

Nype asserts that the prosecution of the fraudulent transfer claims and the alter ego claims by the Trustee, as co-plaintiff, in the State Court Litigation did not violate the automatic stay in the LVLP case.² In addition, the record in this case shows that this Court knew it was the intention of Trustee Krohn and Nype to prosecute the State Court Litigation against the remaining co-defendants.

This Motion seeks an order annulling the automatic stay in this bankruptcy case, to eliminate the question of the validity of the Judgment but not the other issues pending in the NY Bankruptcy Court.³

MEMORANDUM OF LAW

A. RULES FOR ANNULING THE AUTOMATIC STAY

11 U.S.C. §362(d) provides for **annulling** the automatic stay as well as terminating

² The automatic stay does not apply to actions by a debtor or trustee in an offensive posture. *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir.1989); *In re United States Abatement Corp.*, 157 B.R. 278, 279 (E.D.La.1993), *aff'd*, 39 F.3d 563 (5th Cir.1994); *Carley Cap. Grp. v. Fireman's Fund Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir. 1989).

"[T]he automatic stay provision of Section 362 ' "by its terms only stays proceedings against the debtor," and "does not address actions brought by the debtor which would inure to the benefit of the bankruptcy estate." ' ' ' *In re Fin. News Network Inc.*, 158 B.R. 570, 572 (S.D.N.Y. 1993) (quoting *Carley Capital Grp. v. Fireman's Fund Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir. 1989) (per curiam) (quoting *Ass'n of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir. 1982))) (emphasis in *St. Croix*).

Tenas-Reynard v. Palermo Taxi Inc., No. 14 CIV. 6974 (PGG), 2016 WL 1276451, at *7 (S.D.N.Y. Mar. 30, 2016).

³ Nype has voluntarily dismissed the dischargeability action against Liberman because it was not cost effective to retry the entire case against Liberman and because Liberman has no non-exempt assets and is unlikely to have a material amount of non-exempt assets in the future.

the automatic stay. The party seeking annulment must show “cause”.⁴ Section 362(d) expressly authorizes a bankruptcy court to annul the automatic stay in a bankruptcy case. “Bankruptcy courts have the power to annul an automatic stay retroactively for cause pursuant to 11 U.S.C. § 362(d)(1) in order to rehabilitate stay violations.” *Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 329 F.3d 948, 951–52 (8th Cir.2003). See also, *In re Schwartz*, 954 F.2d 569, 573 (9th Cir. 1992) (“If a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay”)

In deciding whether it should grant such relief, the Court looks at the circumstances of the case and balances the equities of the parties’ respective positions. *In re Nat’l Envtl. Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997); *In re Fjeldsted*, 293 B.R. 12, 24 (9th Cir. BAP 2003).

Several factors have been identified by Courts when determining whether circumstances are sufficiently compelling to warrant retroactive annulment of the stay. Such factors include (1) whether the creditor had actual or constructive knowledge of the bankruptcy filing, (2) whether the debtor acted in bad faith, (3) whether grounds would have existed for modification of the stay if a motion had been filed before the violation, (4) whether the denial of retroactive relief would result in unnecessary expense to the creditor, and (5) whether the creditor has detrimentally changed its position on the basis of the action taken. *Id.* at 281.

In re Barr, 318 B.R. 592, 598 (Bankr. M.D. Fla. 2004). In *In re Schumann*, 546 B.R. 223, 228 (Bankr. D.N.M. 2016), the Court listed the factors as follows:

1. Whether the creditor had actual or constructive knowledge of the debtor's bankruptcy filing when it acted in violation of the automatic stay.

⁴ Bankruptcy Code 362(d)(1) provides:

(d) On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, **annulling**, modifying, or conditioning such stay—

- (1) **for cause**, including the lack of adequate protection of an interest in property of such party in interest;

2. Whether the debtor filed the bankruptcy case in bad faith or otherwise acted in bad faith.
3. Whether grounds for relief from the stay existed and a motion, if filed, would likely have been granted prior to the automatic stay violation.
4. How quickly the creditor sought annulment of the automatic stay upon learning of the debtor's bankruptcy filing.
5. Whether the creditor continued to violate the stay after learning of the debtor's bankruptcy filing.
6. Whether the debtor remained 'stealthily silent' in the face of the creditor's unknowing violation of the automatic stay.

In *In re Lett*, 238 B.R. 167, 195 (Bankr.W.D.Mo.1999), and *In re Stockwell*, 262 B.R. 275, 281 (Bankr.D.Vt.2001), the bankruptcy judges also considered "if failure to grant retroactive relief would cause unnecessary expense to the creditor" and "if the creditor has detrimentally changed its position on the basis of the action taken."

The Bankruptcy Appellate Panel for the Ninth Circuit stated:

We conclude that a determination of whether or not to annul the automatic stay and thereby grant retroactive relief requires the court to balance the equities.

In re Fjeldsted, 293 B.R. 12, 15 (B.A.P. 9th Cir. 2003).

The most important analysis this Court should make is two-fold:

- (1) Whether the Court would have lifted the automatic stay if that had been requested before the trial in the State Court Litigation; and
- (2) Taking into consideration all of the circumstances, would annulling the stay be equitable.

B. EFFECT OF ANNULING THE AUTOMATIC STAY

When the automatic stay is annulled it works retroactively to the date of a debtor's petition. See *Franklin Sav. Assn'v. Office of Thrift Supervision*, 31 F.3d 1020, 1023 (10th Cir.1994) (acknowledging that "bankruptcy courts have the authority to 'annul' a stay") (citing 11 U.S.C. § 362(d)); *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 675 (11th Cir.1984) ("The word 'annulling' in ... [§ 362(d)] evidently

contemplates the power of bankruptcy courts to grant relief from the stay which has retroactive effect ...”). Annulment of the automatic stay retroactively validates post-petition actions taken in violation of the automatic stay. *See In re Schwartz*, 954 F.2d 569, 573 (9th Cir.1992) (reasoning that “[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay”); *In re Am. Spectrum Realty, Inc.*, 540 B.R. 730, 743 (Bankr. C.D. Cal. 2015) (“Section 362(d) provides authorization to annul the automatic stay, which, in effect, retroactively ratifies or validates acts that otherwise violated the stay.”); *In re Boni*, 240 B.R. 381, 384 (B.A.P. 9th Cir. 1999) (“By annulling the automatic stay, the bankruptcy court may validate an act that would otherwise be void as a violation of the automatic stay.”).

In this case, Duwaik seeks the annulment of the automatic stay retroactively. The Eleventh Circuit Court of Appeals has explained the distinction between annulling the stay retroactively, as requested by Duwaik, and modifying the stay prospectively to permit a creditor to take an action in the future.

It is true that acts taken in violation of the automatic stay are generally deemed void and without effect. (Citations *598 omitted). Nonetheless, § 362(d) expressly grants bankruptcy courts the option, in fashioning appropriate relief, of “annulling” the automatic stay, in addition to merely “terminating” it. The word “annulling” in this provision evidently contemplates the power of bankruptcy courts to grant relief from the stay which has retroactive effect; otherwise its inclusion, next to “terminating,” would be superfluous.

.....

Accordingly, we hold that § 362(d) permits bankruptcy courts, in appropriately limited circumstances, to grant retroactive relief from the automatic stay.

In re Albany Partners, Ltd., 749 F.2d 670, 675 (11th Cir.1984). Consequently, § 362(d) authorizes the annulment of the stay nunc pro tunc to the date of the petition, provided that the circumstances of the particular case warrant such relief. “Bankruptcy courts have the power to annul an automatic stay retroactively for cause pursuant to 11 U.S.C. § 362(d)(1) in order to rehabilitate stay violations.” *In re Webb*, 294 B.R. 850, 853 (Bankr.E.D.Ark.2003)(quoting *In re Hoffinger Indus.*, 329 F.3d 948, 951–52 (8th Cir.2003)).

In re Barr, 318 B.R. 592, 597–98 (Bankr. M.D. Fla. 2004).

1 In *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, —
 2 U.S. —, 140 S. Ct. 696, 206 L. Ed. 2d 1 (2020) (“*Acevedo*”), the United States Supreme
 3 Court limited a federal court inherent authority to issue *nunc pro tunc* orders. This decision
 4 does not limit a federal court from exercising statutorily granted authority to issue orders
 5 which have retroactive effect.

6 In this Circuit, the rule was stated by a BAP Panel:

7 **E. The Supreme Court's *Acevedo* opinion does not preclude retroactive**
 8 **relief from stay.**

9 During the pendency of this appeal, the Supreme Court
 10 decided *Acevedo*, 140 S. Ct. 696, in which it held that a United States
 11 District Court's *nunc pro tunc* order remanding a removed lawsuit to state
 12 court was not effective to retroactively confer jurisdiction so as to validate
 13 the state court's orders entered before remand. *See id.* at 699-701.⁹ At least
 14 one bankruptcy court has interpreted *Acevedo* as prohibiting a grant of
 15 retroactive or *nunc pro tunc* relief from stay. *In re Telles*, No. 8-20-70325-
 16 reg, 2020 WL 2121254 (Bankr. E.D.N.Y. Apr. 30, 2020).

17 **We do not believe that the ruling in *Acevedo* prohibits a**
 18 **bankruptcy court's exercise of the power to grant retroactive relief from**
 19 **stay.** But this court should always carefully consider the scope and reach of
 20 Supreme Court opinions; and in light of our disagreement with *Telles*—
 21 that *Acevedo* is directly relevant to requests to terminate or annul the stay
 22 retroactively—we consider the issue here and at some length.

23 *In re Merriman*, 616 B.R. 381, 391–92 (B.A.P. 9th Cir. 2020) (emphasis added), *appeal*
 24 *dismissed*, No. 20-60036, 2021 WL 3610895 (9th Cir. Feb. 26, 2021). This rule has been
 25 followed by this Court. *In re Sorelle*, No. BK-S-19-17870-MKN, 2020 WL 8551788, at
 26 *8 (Bankr. D. Nev. Dec. 2, 2020) and other bankruptcy courts. *See In re Miller*, 620 B.R.
 27 637, 641 (Bankr. E.D. Cal. 2020); *In re Wellington*, No. 20-10080, 2021 WL 1963933
 28 (Bankr. M.D.N.C. Mar. 9, 2021) (following and quoting *Merriman*); *In re Grinding*
Specialists, LLC, 625 B.R. 6, 14 (Bankr. D.S.C. 2021). *See also In re SS Body Armor I,*
Inc., No. 10-11255(CSS), 2021 WL 2315177, at *3 (Bankr. D. Del. June 7, 2021)
 (“The *Acevedo* case prohibits courts from using *nunc pro tunc* orders to cure jurisdictional
 defects arising under 28 U.S.C. § 1445(d), which governs nonremovable
 actions. *Acevedo* does not prohibit courts from entering *nunc pro tunc* orders where there

are no jurisdictional defects.”).

Movants are aware that Judge Grossman (the presiding judge in the Liberman Bankruptcy Case) has taken the opposite position. He has held:

The landscape of the law is different post-*Acevedo*, and this Court is bound to follow the precedent set by the Supreme Court. The Supreme Court has clarified that *nunc pro tunc* relief cannot be used to confer jurisdiction where none existed. *Acevedo*, 140 S.Ct. at 700-01. Once a debtor files for bankruptcy, the state court is divested of jurisdiction over property of the estate, and any action taken by the state court with respect to the debtor's property is void.

In re Telles, No. 8-20-70325-REG, 2020 WL 2121254, at *4 (Bankr. E.D.N.Y. Apr. 30, 2020).

This Court should find *Merriman* more persuasive than *Telles*.

C. RULES FOR LIFTING STAY FOR PENDING LITIGATION

11 U.S.C. § 362 pertains to the lifting of the automatic stay and provides that a Court may grant the request of a moving party to modify the automatic stay for cause. *See* 11 U.S.C. § 362(d)(1). Although the Bankruptcy Code does not define “cause,” courts in the Ninth Circuit have granted relief from stay under § 362(d)(1) when necessary to permit pending litigation to be concluded in another forum if the nonbankruptcy suit involves multiples parties or is ready for trial. *See In re John Smith (In re Smith)*, 389 B.R. 902, 917-18 (D.Nev. 2008) (citing *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990)).

Stay relief shall be granted upon a showing of “cause,” which “has no clear definition and is determined on a case-by-case basis.” *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346, 352 (9th Cir.1996), quoting *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir.1990). The decision whether to grant or deny relief from the automatic stay “is committed to the sound discretion of the bankruptcy court.” *Conejo*, 96 F.3d at 351.

Especially when litigation in a nonbankruptcy court is ready for trial or has already been tried and is ready for judgment, it is not uncommon for bankruptcy courts to find cause to lift the automatic stay, at least to permit entry of judgment to liquidate the amount of a claim asserted against a

debtor.

In re Patel, 291 B.R. 169, 172 (Bankr. D. Ariz. 2003). *See In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 556–57 (Bankr.C.D.Cal.2004) (“Courts in the Ninth Circuit have granted relief from the stay under § 362(d)(1) when necessary to permit pending litigation to be concluded in another forum if the non-bankruptcy suit involves multiple parties or is ready for trial.”) (citations omitted); *In re Am. Spectrum Realty, Inc.*, 540 B.R. 730 (Bankr. C.D. Cal. 2015) (“cause” existed to lift automatic stay to allow state court litigation that had been pending against Chapter 11 debtor for more than two years to proceed before court that was very familiar with issues and parties).

The burden of proof on a motion to modify the automatic stay is a shifting one. *See In re Smith*, 389 B.R. at 918 (citations omitted). Once the moving party establishes a prima facie case that “cause” exists, the burden shifts to the debtor to show that relief from the stay is unwarranted. *See id.* Courts have identified various factors relevant to determining whether the stay should be lifted to allow a creditor to continue pending litigation in a non-bankruptcy forum. In particular, most courts analyze twelve nonexclusive factors as issues a bankruptcy court should weigh in determining whether to lift the stay. *See In re Smith*, 389 B.R. at 918-9; *see In re Curtis*, 40 B.R. 795, 799-800 (Bankr.D. Utah 1984); *see Sonnax Indus., Inc. v. Tri Component Prods. Corp (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1285 (2d Cir. 1990). These factors (the “*Sonnax/Curtis* factors”) are as follows:

- (1) Whether the relief will result in a partial or complete resolution of the issues;
- (2) The lack of any connection with or interference with the bankruptcy case;
- (3) Whether the foreign proceeding involves the debtor as a fiduciary;
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) Whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation;

- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors committee and other interested parties;
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 5109(c);
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) The impact of the stay on the parties and the "balance of hurt."

See In re Smith, 389 B.R. at 918-19.

ARGUMENT

A. STAY SHOULD BE ANNULLED TO VALIDATE THE STATE COURT JUDGMENT AFTER TRIAL ON THE MERITS

Nype is asking this Court to annul the automatic stay in this case to eliminate any question that the Judgment issued in the State Court Litigation was valid against the Co-Defendants, including Liberman. There was no bankruptcy stay of the action against Liberman and the Co-Defendants because they are not debtors and the automatic stay does not protect non-debtor co-defendants.⁵ The New York Bankruptcy Court decided that because LVLP was originally named as a defendant in the State Court Litigation, that

⁵ "[T]he automatic stay is not available to non-bankrupt co-defendants of a debtor even if they are in a similar legal or factual nexus with the debtor." *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1205 (3d Cir.1991). *See also, e.g., Teachers Ins. & Annuity Ass'n v. Butler*, 803 F.2d 61, 65 (2d Cir.1986) ("It is well-established that stays pursuant to § 362(a) are limited to debtors and do not encompass non-bankrupt co-defendants."); *Marcus, Stowell & Beye Government Securities, Inc. v. Jefferson Investment Corp.*, 797 F.2d 227, 230 n. 4 (5th Cir.1986) ("The well established rule is that an automatic stay of judicial proceedings against one defendant does not apply to proceedings against co-defendants.").

litigation was stayed even after Trustee Krohn intervened and made the LVLP bankruptcy estate a plaintiff in that litigation.

It was and still is the position of Nype and Trustee Krohn that there was no bankruptcy stay of the action for fraudulent transfers and alter ego because those actions were being brought by Trustee Krohn on behalf of the LVLP Bankruptcy Estate. Generally, the automatic stay enjoins actions against a debtor or debtor's property interests but not actions for the benefit of the bankruptcy estate.

The application of the facts of this case to the *Barr/Schuman* factors is as follows:

1. **Whether the creditor had actual or constructive knowledge of the debtor's bankruptcy filing when it acted in violation of the automatic stay.** Trustee Krohn and Nype were aware of the LVLP Bankruptcy Case.
2. **Whether the debtor filed the bankruptcy case in bad faith or otherwise acted in bad faith.** The LVLP Bankruptcy Case was filed on the eve of trial in the State Court causing a further delay until Trustee Krohn could employ counsel and intervene. Filing to avoid trial is an indicator of "bad faith".
3. **Whether grounds for relief from the stay existed and a motion, if filed, would likely have been granted prior to the automatic stay violation.** The grounds for lifting the automatic stay existed at the time this court authorized the employment of Special Counsel to prosecute the LVLP Bankruptcy Estate's claims.
4. **How quickly the creditor sought annulment of the automatic stay upon learning of the debtor's bankruptcy filing.** Trustee Krohn and Nype did not immediately seek relief from the stay because they were under the impression that prosecution of the LVLP Bankruptcy Estate's claims by the Trustee did not require the automatic stay to be lifted.

5. **Whether the creditor continued to violate the stay after learning of the debtor's bankruptcy filing.** Because neither the plaintiffs nor the defendants in the State Court Litigation believed that the automatic stay enjoined the Trustee's prosecution of claims belonging to the LVLP Bankruptcy Estate, no relief from stay was sought prior to the current motion.

6. **Whether the debtor remained 'stealthily silent' in the face of the creditor's unknowing violation of the automatic stay.** Neither Liberman nor the Co-Defendants raised the automatic stay in the State Court Litigation or in the pending NY Bankruptcy Case. The issue was raised by Judge Grossman.

The application of the facts of this case to the *Sonnax/Curtis* factors is as follows:

1. **Whether the relief will result in a partial or complete resolution of the issues:** This Motion seeks relief concerning one issue: whether the automatic stay in the LVLP Bankruptcy Case (not in the Liberman Bankruptcy Case) enjoined the prosecution of the claims by the Trustee Krohn and Nype in the State Court Litigation. The annulment of the stay will make the State Court's Judgment a valid and preclusive judgment. **This factor favors annulling the stay.**
2. **The lack of any connection with or interference with the bankruptcy case:** The annulment of the stay will have no effect on the administration of the LVLP Bankruptcy Case (except to make the judgment in favor of the LVLP Bankruptcy estate against Liberman more likely to be determined to be non-dischargeable). The annulment of the stay will promote the administration of this bankruptcy estate. **This factor favors annulling the stay.**
3. **Whether the foreign proceeding involves the debtor as a fiduciary:** Not applicable. **This factor is neutral.**

4. **Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases:** The State Court business court was created to hear business cases. It has already tried the case. But it has no more expertise than the bankruptcy court. **This factor favors annulling the stay.**
5. **Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation:** No. **This factor does not favor annulling the stay.**
6. **Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question:** No. The State Court Litigation obtained awards against non-debtor Co-Defendants as well as against Liberman. **This factor favors annulling the stay.**
7. **Whether the litigation in another forum would prejudice the interests of other creditors, the creditors committee and other interested parties:** No. The State Court Litigation to recover fraudulent transfers of the debtor's property will benefit the estate. **This factor favors annulling the stay.**
8. **Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c):** No. Equitable subordination is not involved in the State Court Litigation. **This factor favors annulling the stay.**
9. **Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f):** No. **This factor favors annulling the stay.**
10. **The interest of judicial economy and the expeditious and economical determination of litigation for the parties:** Yes. Two

years ago, the State Court, after 3 years, tried the case over several days. The State Court had jurisdiction over all of the defendants and the subject matter of the litigation. **This factor favors annulling the stay.**

11. **Whether the foreign proceedings have progressed to the point where the parties are prepared for trial:** Yes. The matter was set for trial just when LVLP filed its bankruptcy petition (to delay the State Court trial). The State Court, with the Trustee as a co-plaintiff, conducted the multi-day trial two years ago. **This factor favors annulling the stay.**

12. **The impact of the stay on the parties and the “balance of hurt”:** Since the issues have already been litigated, all parties benefit from annulling the stay to avoid the time and expense of a retrial. **This factor favors annulling the stay.**

Based on these factors, this Court should annul the stay to allow the Judgment to be a valid final judgment in favor of Nype and the Trustee to (a) to be used in the Liberman Bankruptcy Case and (b) to be used to collect awarded damages and property from the Co-Defendants.

WHEREFORE, the Russell Nype and Revenue Plus, LLC request that this Court enter an order:

1. Annuling the automatic stay in this case with regard to the State Court Litigation to eliminate any question concerning the validity of the Judgment entered in the State Court Litigation (a) to be used in the Liberman Bankruptcy Case and (b) to be used to collect awarded damages and property from the Co-Defendants; and (c) to allow the pending appeal to the Nevada Supreme Court from the Judgment issued by the State Court.

///

///

///

2. For such further relief as this Court deems just and proper.

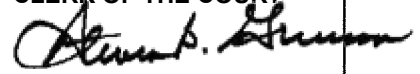
Dated this March 9, 2022

/s/ Lenard E. Schwartz
Lenard E. Schwartz, Esq.
Schwartz & McPherson Law Firm
2850 S. Jones Blvd., Suite 1
Las Vegas, NV 89146
Counsel for Russell Nype and Revenue Plus, LLC

SCHWARTZ & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122

EXHIBIT A

Electronically Filed
11/12/2019 5:00 PM
Steven D. Grierson
CLERK OF THE COURT



1 MINV
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No: 2419
5 1840 East Sahara Avenue, Suite 106
6 Las Vegas, Nevada 89104
7 Telephone No: (702) 386-7002
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9 Email: [Jmuije@muijelawoffice.com](mailto:jmuije@muijelawoffice.com)
10 *Attorneys for Proposed Plaintiff*
11 *In Intervention Shelley D. Krohn*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 RUSSELL L. NYPE AND REVENUS PLUS,
12 LLC

13 Plaintiffs,

14 vs.

15 DAVID J. MITCHELL; BARNET LIBERMAN; LAS
16 VEGAS LAND PARTNERS, LLC; MEYER
17 PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
18 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,
19 LLC; LIVE WORK MANAGER, LLC; AQUARIUS
20 OWNER, LLC; LVLV HOLDINGS, LLC;
21 MITCHELL HOLDINGS, LLC; LIBERMAN
22 HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE
23 WORKS TIC SUCCESSOR, LLC; CASINO
24 COOLIDGE LLC; DOES I through III, and ROE
25 CORPORATIONS I through III, inclusive,

26 Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

**SHELLEY D. KROHN, BANKRUPTCY
TRUSTEE'S MOTION TO INTERVENE**

DATE:

TIME:

24 COMES NOW, SHELLEY D. KROHN, Proposed Plaintiff-in-Intervention (hereinafter
25 "Plaintiff"), by and through the undersigned counsel, who hereby respectfully submits her Motion
26 to Intervene in this matter. This Motion is supported by the following Memorandum of Points
27

28

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: [Jmuije@muijelawoffice.com](mailto:jmuije@muijelawoffice.com)

1 and Authorities, the exhibits attached hereto, the Court's file herein, and any evidence adduced at
2 the hearing to be held by the Court.

3 DATED this 12 day of November, 2019

4 JOHN W. MUIJE & ASSOCIATES

5
6
7 By: 

8 JOHN W. MUIJE, ESQ.

9 Nevada Bar No. 2419

10 1840 East Sahara Avenue, #106

11 Las Vegas, Nevada 89104

12 Telephone: 702-386-7002

13 Facsimile: 702-386-9135

14 E-Mail: jmuije@muijelawoffice.com

15 *Attorneys for Proposed Plaintiff*

16 *In Intervention Shelley D. Krohn*

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Shelley D. Krohn (hereinafter "Krohn") brings this Motion seeking to Intervene in this matter pursuant to NRCP 24(a) as Krohn, has an interest in the subject matter of this action and the disposition of this action affects Trustee's ability to recover, on behalf of the Bankruptcy of Las Vegas Land Partners, LLC, BK-S-19-15333-MKN, the funds which the original Plaintiff herein has sought to recover with regard to the alleged fraudulent conveyances involving the various named Defendants herein.

Krohn is familiar with the claims asserted in this litigation and has consulted with counsel for the original Plaintiff. Krohn has obtained Bankruptcy Court approval to employ John W. Muije, Esq., attorney as Special Counsel for the purpose of pursuing the claims asserted herein, *inter alia*, from the various defendants already named. See Exhibit "1." Under applicable Bankruptcy law, the Bankruptcy Trustee has two years from the date that a Bankruptcy Petition is filed, and a Trustee appointed, to assert and seek claims such as those already pending before this Court. The Trustee respectfully represents that such is exactly what she wants to do, and that the appropriate forum for the same, in the exercise of the Trustee's sound business judgment, is the already pending matter before this Honorable Court.

II.

ARGUMENT AND AUTHORITIES

Shelley D. Krohn seeks the permission of this Court to intervene in this matter pursuant to NRS 12.130, which provides that before trial, "any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest

1
2 against both.” The intervention is to be made as provided for in the Nevada Rules of Civil
3 Procedure. *Id.* NRCP 24(a) provides that:

4
5 Upon timely application anyone shall be permitted to intervene
6 in an action: (1) when a statute confers an unconditional right
7 to intervene; or (2) when the application claims an interest
8 related to the property or transaction which is the subject of
9 the action and the applicant is so situated that the disposition
10 of the action may as a practical matter impair or impede the
11 applicant’s ability to protect that interest.

12 As there is no statute applicable in this matter that provides Shelley D. Krohn, an
13 unconditional right to intervene, Shelley D. Krohn’s application is governed by NRCP 24(a)(2),
14 and allows a party to intervene if it meets the following four requirements: (1) that she have
15 sufficient interest in the subject matter of the litigation, (2) that her ability to protect that interest
16 may be impaired if she does not intervene; (3) that her interest is not adequately represented by
17 existing parties, and (4) that is application is timely. *American Home Assurance Company v.*
Eighth Judicial District Court, 122 Nev. 1229, 147 P.3d 1120, 1127 (2006).

18 The timeliness of an applicant’s motion to intervene is “a determination that lies within
19 the sound discretion of the trial court.” *Lawler v. Ginocchio*, 94 Nev. 623, 626, 584 P.2d 667
20 (1978) quoting *Cleland v. Eighth Judicial District Court*, 92 Nev. 454, 456. 552 P.2d 488 (1976).

21 The timeliness requirement “must have accommodating flexibility toward both the court and the
22 litigants if it is to be successfully employed to regulate intervention in the interest of justice.” *Id.*
23 A copy of Shelley D. Krohn’s proposed Complaint In Intervention is attached hereto as Exhibit
24 “2”.
25

26 The fraudulent transfer claims previously brought by the Plaintiff as creditors likely
27 became property of the Bankruptcy Estate of LVLV, and the Trustee, as representative of that
28

1 Bankruptcy Estate of LVLV pursuant to Bankruptcy Code Section 323(a), has the authority to
2 bring such actions.

3 11 U.S.C. Section 544 provides in part:

- 4
5 (a) The Trustee shall have, as of the commencement
6 of the case, and without regard to any knowledge of
7 the trustee or of any creditor, the rights and powers
8 of, or may avoid any transfer of property of the
9 debtor or any obligation incurred by the debtor.

10 Here, Shelley D. Krohn's application to intervene in this action meets all four
11 requirements of NRCV 24(a)(2). Shelley D. Krohn has a sufficient interest in the subject matter
12 of this litigation. Trustee has conducted reasonable discovery in the context of the Las Vegas
13 Land Partners, LLC's bankruptcy proceeding, and is reasonably persuaded that meritorious
14 claims exist against the various named defendants herein, to recoup and recover valuable assets
15 that once belonged beneficially to the Debtor, Las Vegas Land Partners, LLC.

16 It is true that the Trustee could elect to start over from scratch and could independently
17 invoke the jurisdiction before the State Court or before the Bankruptcy Court. Nevertheless,
18 where and how to pursue the recovery of the claims asserted is unequivocally within the business
19 judgment of a Bankruptcy Trustee, and the Trustee has elected to intervene in this case, with
20 multiple defendants already active and present, as opposed to starting over from scratch.

21 Because of the overlapping claims, it is judicially economic to bring all the claims to trial
22 at the same time. Having to literally reinvent the wheel would be inefficient, detrimental to
23 judicial economy, and might very well impair the efficacy of the Trustee's attempt to recover the
24 subject property for the benefit of the Estate. Given the nature of the underlying common law
25 and state law claims, it is appropriate that the Trustee join with the existing Plaintiff, both of
26 whom have legitimate interests in the anticipated proceeds of this litigation, and further, that the
27 Trustee be present so as to protect the interests of the Bankruptcy Estate and the other creditors.
28

1 Finally, as noted hereinabove, Congress in its infinite wisdom has declared that a
 2 Bankruptcy Trustee has two years to evaluate, investigate, and develop theories to recover assets
 3 for the Bankruptcy Estate, and to initiate the pursuit of claims such as that sought in this
 4 litigation. Accordingly, Las Vegas Land Partners, LLC's bankruptcy having commenced a less
 5 than four months ago, the Trustee is well within the statutory time allowed.
 6

7 **III.**

8 **CONCLUSION**

9 Therefore, Shelley D. Krohn respectfully requests that the Court grant her Motion to
 10 Intervene and order that Shelley D. Krohn be allowed to file her Complaint-in-Intervention in this
 11 matter, since Shelley D. Krohn's application meets the requirements of NRCP 24(a)(2), and she
 12 should be heard in this matter.
 13

14 DATED this 12th day of November, 2019

15 **JOHN W. MUIJE & ASSOCIATES**

16
 17
 18 By: 

19 **JOHN W. MUIJE, ESQ.**
 20 Nevada Bar No. 2419
 21 1840 East Sahara Avenue, #106
 22 Las Vegas, Nevada 89104
 23 Telephone: 702-386-7002
 24 Facsimile: 702-386-9135
 25 E-Mail: jmuje@muijelawoffice.com
 26 *Attorneys for Proposed Plaintiff*
 27 *In Intervention*
 28

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 Telephone: 702-386-7002
 Email: jmuje@muijelawoffice.com

CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the

12TH day of November, 2019, I caused the foregoing document, **SHELLEY D. KROHN,**

BANKRUPTCY TRUSTEE'S MOTION TO INTERVENE, to be served as follows:

- ☐ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or
- ☒ by electronically filing and serving with the Clerk of the Court via the Odyssey E File and Serve System;
- ☐ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows:


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Attorneys for Mitchell Defendants


An Employee of JOHN W, MUIJE & ASSOCIATES

Exhibit “1”


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
October 31, 2019

SHELLEY D. KROHN
E-mail: Shelley@TrusteeKrohn.com
510 South 8th Street
Las Vegas, Nevada 89101
Telephone: (702) 421-2210
Facsimile: (702) 366-1939

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:)	CASE NO. BK-S-19-15333-MKN
)	CHAPTER 7
LAS VEGAS LAND PARTNERS, LLC)	
)	
)	Date: October 30, 2019
)	Time: 2:30 p.m.
)	
Debtor.)	

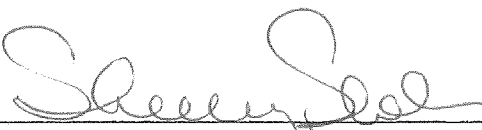
**ORDER GRANTING APPLICATION TO EMPLOY JOHN W. MUIJE & ASSOCIATES AS
SPECIAL COUNSEL ON A CONTINGENT FEE BASIS UNDER 11 U.S.C. §327(a)**

This matter having come on for hearing at the date and time set forth above and upon reading the Motion of Shelley D. Krohn, Trustee, to employ the law firm of JOHN W. MUIJE & ASSOCIATES as Special Counsel for the Estate pursuant to 11 U.S.C. §327 and §328; it appearing to the Court that neither the attorney, nor the firm, hold

1 or represent an interest adverse to the Estate, that the attorney is
2 a disinterested party within the meaning of §101(14) of the
3 Bankruptcy Code and may represent the Estate under 11 U.S.C. §327,
4 that the declaration of John Muije is sufficient, and that the
5 employment of special counsel is necessary and in the best interests
6 of the Estate and the creditors; the Court noting the appearances of
7 Shelley D. Krohn, Trustee, and Lenard E. Schwartz, Esq., bankruptcy
8 counsel for Russell Nype and Revenue Plus, LLC, and for good cause
9 appearing, it is hereby:
10

11 **ORDERED** that pursuant to §327 and §328 of the Bankruptcy Code,
12 the Trustee is authorized to employ the law firm of JOHN W. MUIJE &
13 ASSOCIATES as Special Counsel on a contingent fee basis in accordance
14 with the terms of the agreement set forth in the Motion and
15 Declaration in support for this Order. The payment of all fees and
16 costs are subject to further approval by this Court.

17 Respectfully submitted by:
18

19 
20 _____
21 **SHELLEY D. KROHN, TRUSTEE**
22
23
24
25
26
27
28

CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

☒ The court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Counsel appearing:

☒ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order

IT IS SO ORDERED.

#

Exhibit “2”

1 **COMP**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

4 Nevada Bar No. 2419

5 1840 East Sahara Avenue, Suite 106

6 Las Vegas, Nevada 89104

7 Telephone: 702-386-7002

8 Facsimile: 702-386-9135

9 Email: jmuije@muijelawoffice.com

10 *Attorneys for Plaintiff-in-Intervention*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 RUSSELL L. NYPE AND REVENUS PLUS,
14 LLC

CASE NO: A-16-740689-B

15 Plaintiffs,

DEPT. NO: XI

16 vs.

17 **[PROPOSED] COMPLAINT IN
18 INTERVENTION FOR:**

19 DAVID J. MITCHELL; BARNET LIBERMAN;
20 MEYER PROPERTY, LTD.; ZOE PROPERTY,
21 LLC; LEAH PROPERTY, LLC; WINK ONE, LLC;
22 LIVE WORK, LLC; LIVE WORK MANAGER,
23 LLC; AQUARIUS OWNER, LLC; LVLP
24 HOLDINGS, LLC; MITCHELL HOLDINGS, LLC;
25 305 LAS VEGAS, LLC; LIVE WORKS TIC
26 SUCCESSOR, LLC; CASINO COOLIDGE LLC;
27 DOES I through III, and ROE CORPORATIONS I
28 through III, inclusive,

1. **CONSTRUCTIVE TRUST;**
2. **FRAUDULENT CONVEYANCE;**
3. **CONSPIRACY TO DEFRAUD;**
4. **DECLARATORY RELIEF; AND**
5. **ALTER EGO**

Mitchell Defendants.

**ARBITRATION EXEMPT
(EQUITABLE RELIEF)**

29 **SHELLEY D. KROHN, U.S. BANKRUPTCY
30 TRUSTEE**

31 **Proposed Plaintiff-In-Intervention**

32 COMES NOW, SHELLEY D. KROHN, U.S. Bankruptcy Trustee (hereinafter referred to as
33 "TRUSTEE"), and as and for causes of action against the Defendants, DAVID J. MITCHELL;
34 BARNET LIBERMAN; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC;

WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LW VEGAS, LLC; CASINO COOLIDGE LLC, alleges and shows as follows:

GENERAL FACTUAL ALLEGATIONS

1. The Trustee was duly appointed to act as the Trustee in the Bankruptcy Case of Las Vegas Land Partners, LLC, Case No. BK-19-15333-mkn (hereinafter referred to as "TRUSTEE").

2. Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter "NYPE"), a New York Limited Liability Company.

3. Defendant, DAVID J. MITCHELL (hereinafter "Mitchell), is an adult resident of New York.

4. Defendant, BARNETT LIBERMAN (hereinafter "Liberman), is an adult resident of New York.

5. Aquarius Owner, LLC is or was a Delaware limited liability company registered to do business in the State of Nevada in November, 2004, and maintained its registration through and including approximately November, 2009.

6. On information and belief, Aquarius Owner LLC was owned and directed by Mitchell, Liberman, and/or LVLP.

7. In that context, various real property transfers and ownership equity took place between LVLP and/or Aquarius Owner, LLC, during the operative time, and on information and belief, financial distributions and transactions occurred between Aquarius Owner LLC, and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents.

1 8. FC/LW Vegas is or was a Delaware limited liability company registered to do
2 business in the State of Nevada in February 2011 which has maintained registration through the
3 present.
4

5 9. FC/LW, LLC, on information and belief, is an entity beneficially and jointly
6 owned and operated by Liberman, Mitchell, LVLP, LIVE WORK, LLC and non-party Forest City
7 Enterprises, for purposes of developing and managing various real property interest in Southern
8 Nevada.
9

10 10 In that context, various real property transfers and ownership equity took place
11 between LIVE WORK, LLC and/or FC/LW, LLC, during the operative time, and on information
12 and belief, financial distributions and transactions occurred between FC/LV Vegas, LLC, and its
13 principals on a recurring basis, most of which were never disclosed in publicly available records
14 or documents.
15

16 11. Leah Property, LLC is a Delaware limited liability that first registered to do
17 business in Southern Nevada in approximately February, 2005, and continued to be active and
18 operate in the Southern Nevada area through and including February, 2015.
19

20 13. On information and belief, Leah Property LLC is owned, managed, and operated
21 by Liberman, at all relevant times.
22

23 14. In that context, various real property transfers and ownership equity took place
24 between LVLP and/or Leah Property, LLC, during the operative time, and on information and
25 belief, financial distributions and transactions occurred between Leah Property, LLC and its
26
27
28

1 principals on a recurring basis, most of which were never disclosed in publicly available records
2 or documents..

3
4 15. Live Work LLC is a Delaware limited liability company who first became active in
5 Southern Nevada in or about April, 2005, and in fact was a plaintiff in the original underlying
6 lawsuit with LVLP versus the plaintiffs herein. Live Work, LLC, on information and belief,
7 continued to be active and operating in Southern Nevada through and including approximately
8 April, 2012.

9
10 16. On information and belief, Live Work, LLC was owned, operated, and managed by
11 Liberman, Mitchell, LVLP, Live Work Manager, LLC, and/or Mitchell Holdings, and was an
12 active.

13 17. In that context, various real property transfers and ownership equity took place
14 between LVLP and/or Live Work, LLC, during the operative time, and on information and belief,
15 financial distributions and transactions occurred between Live Work Manager, LLC and its
16 principals on a recurring basis, most of which were never disclosed in publicly available records
17 or documents.

18
19 18. Livework Manager, LLC was a Delaware Limited Liability that first registered to
20 do business in the State of Nevada in approximately April, 2005, and continued active and in
21 business in Southern Nevada through the present.

22
23 19. Livework Manager, LLC was owned, operated and managed by, on information
24 and belief, by Liberman, Mitchell, and/or LVLP.

25 20. In that context, various real property transfers and ownership equity took place
26 between LVLP and/or Live work Manger, LLC, during the operative time, and on information and
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2 belief, financial distributions and transactions occurred between Livework Manager, LLC and its
3 principals on a recurring basis, most of which were never disclosed in publicly available records
4 or documents.

5 21. Zoe Property, LLC is a Delaware Limited Liability Company that first registered
6 and became active in Southern Nevada in or about November 2004, and in fact was one of the
7 original plaintiffs along with Live Work, LLC and LVLP versus the plaintiffs herein. On
8 information and belief, Zoe Property, LLC operated and continued to be active in Southern
9 Nevada through approximately November, 2007.

11 22. Zoe Property, LLC, was owned, operated and managed by, on information and
12 belief, by Liberman, Mitchell and/or LVLP.

13 23. In that context, various real property transfers and ownership equity took place \
14 \between LVLP and/or Zoe Property, LLC, during the operative time, and on information and
15 belief, financial distributions and transactions occurred between Zoe Property, LLC and its
16 principals on a recurring basis, most of which were never disclosed in publicly available records
17 or documents.

18 24. Wink One, LLC is a Delaware limited liability company that registered to do
19 business in the State of Nevada in approximately April, 2008, and remained active, according to
20 Secretary of State records, through and including approximately April, 2009. Wink One, LLC, on
21 information and belief, was owned, operated and managed by Liberman, Mitchell, and/or LVLP.

22 25,. Wink One, LLC was owned, operated and managed by, on information and belief,
23 by Liberman, Mitchell, and/or LVLP.
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2 26. In that context, various real property transfers and ownership equity took place
3 between LVLP and/or Wink One, LLC, during the operative time, and on information and belief,
4 financial distributions and transactions occurred between Wink One, LLC and its principals on a
5 recurring basis, most of which were never disclosed in publicly available records or documents..

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7 27. Casino Coolidge, LLC is a Delaware limited liability company that first registered
8 to do business in Southern Nevada in or about October, 2014.

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10 28. On information and belief, Casino Coolidge, LLC is owned, operated and managed
11 by Liberman, Mitchell, and/or LVLP.

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13 29. In that context, various real property transfers and ownership equity took place
14 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on information and
15 belief, financial distributions and transactions occurred between Casino Coolidge, LLC and its
16 principals on a recurring basis, most of which were never disclosed in publicly available records
17 or documents and continues to operate and be active in Southern Nevada through the present.

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19 30. In that context, various real property transfers and ownership equity took place
20 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on information and
21 belief, financial distributions and transactions occurred between Casino Coolidge, LLC and its
22 principals on a recurring basis, most of which were never disclosed in publicly available records
23 or documents.

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25 31. 305 Las Vegas, LLC is a Delaware limited liability company that first registered
26 and qualified to do business in Southern Nevada in approximately April, 2007, and remains active
27 and doing business in Southern Nevada through the present.
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1 32. On information and belief, 305 Las Vegas, LLC was originally owned, operated
2 and managed by Liberman and/or LVLP.

3 33. In that context, various real property transfers and ownership equity took place
4 between LVLP, its affiliates and/or 305 Las Vegas, LLC, during the operative time, and on
5 information and belief, financial distributions and transactions occurred between 305 Las Vegas,
6 LLC, LVLP and its principals or affiliates on a recurring basis, most of which were never
7 disclosed in publicly available records or documents and continues to operate and be active in
8 Southern Nevada through the present.
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10 34. In that context, various real property transfers and ownership equity took place
11 between LVLP and its affiliates and/or 305 Las Vegas, LLC, during the operative time, and on
12 information and belief, financial distributions and transactions occurred between 305 Las Vegas,
13 LLC, LVLP and its principals and affiliates on a recurring basis, most of which were never
14 disclosed in publicly available records or documents.
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16 35. On information and belief, unbeknownst to Plaintiffs, in approximately 2012
17 305 Las Vegas, LLC engaged in an internal transaction resulting in the acquisition of the
18 beneficial interest of Mitchell by a Mr. Win Churchill, and a monetary distribution benefitting
19 Mitchell to the tune of \$7.5 million, all of which Plaintiff has only learned at very recent times.
20

21 36. On information and belief, MEYER PROPERTY, LTD., is fictitious entity that
22 was involved for a relatively short period of time with LEAH PROPERTY, LLC, and in the
23 context thereof participated in real estate transactions resulting in net financial gain to Leah and/or
24 Liberman, Mitchell, and/or LVLP, the specifics of which financial gains were never disclosed nor
25 reasonably discoverable by Plaintiffs herein.
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2 37. In that context, various real property transfers took place between LVLP and/or
3 Meyer Property, LLC, during the operative time, and on information and belief, financial
4 distributions and transactions occurred between Meyer Property, LLC and its principals on a
5 recurring basis, most of which were never disclosed in publicly available records or documents
6 and continues to operate and be active in the State of Nevada through the present.
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8 38. On information and belief, Mitchell Holdings, LLC is a Delaware limited liability
9 company that never qualified to do business within the State of Nevada, but was used by
10 Defendant Mitchell for purposes of owning Mitchell's equity or beneficial interest in various other
11 defendants, and fuddling money back and forth between such entities, in a matter that would not
12 be detectable or readily discoverable by Plaintiffs or other creditors.
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14 39. In that context, various real property transfers and ownership equity took place
15 between LVLP and/or Mitchell Holdings, LLC during the operative time, and on information and
16 belief, financial distributions and transactions occurred between Mitchell Holdings, LLC and its
17 principals on a recurring basis, most of which were never disclosed in publicly available records
18 or documents, is a Delaware limited liability that first registered to do business in Nevada in
19 approximately February, 2011, and continues to operate and do business, in good standing,
20 through and including this date.
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22 40. Live Works TIC Successor, LLC, on information and belief, is an entity in
23 which Liberman, Mitchell, and/or Las Vegas Land Holdings had substantial equity or beneficial
24 interest, and was the ultimate recipient of financial proceeds, monies, emoluments and benefits
25 deriving from Live Work TIC Successor LLC, and a tendency and common agreement entered
26 into between Live Work TIC Successor, LLC and non-party Forest City Enterprises, through
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2 contractual and financial arrangements, referred to as the tenancy in common agreement, and
3 numerous subsequent amendments thereto.

4 41. In that context, various real property transfers and ownership equity took place
5 between LVLP and/or Live Works TIC Successor, LLC during the operative time, and on
6 information and belief, financial distributions and transactions occurred between Live Works TIC
7 Successor, LLC and its principals on a recurring basis, most of which were never disclosed in
8 publicly available records or documents..
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10 42. Entity Defendants, MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
11 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC;
12 AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305
13 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LW VEGAS, LLC, are
14 believed to be Delaware limited liability companies and/or corporations which have conducted
15 business in the State of Nevada, and are alleged to be owned and/or controlled, in whole or in part
16 by Defendants, LAS VEGAS LAND PARTNERS, LLC, DAVID MITCHELL and BARNET
17 LIBERMAN.
18

19 43. LVLP, LLC, Mitchell, and Liberman, created the various Entity Defendants,
20 MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE,
21 LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP
22 HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC
23 SUCCESSOR, LLC; FC/LV VEGAS, LLC, on information and belief, and used multiple
24 sophisticated counsel for purposes of secreting, hiding, and conveying away valuable assets that
25 were available to satisfy creditors such as Plaintiffs as alleged more specifically hereinafter
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(hereinafter referred to as the "Asset Protection Scheme").

44. That Plaintiffs do not at present know the true names and identities of those Entity Defendants, both corporate and individual, herein joined by fictitious names, but is informed and believes and therefore alleges that said Entity Defendants, are agents, employees, servants and representatives of the named Entity Defendants, or persons and entities acting in concert with the named Entity Defendants with respect to the premises herein plead, who are liable to the Plaintiffs by reason thereof, and the Plaintiffs pray leave to amend this Complaint to insert their true names and identities with appropriate allegations when the same becomes known.

45. Upon information and belief, part of the Asset Protection Scheme contemplated that the majority of the purported equity interests in the asset protection entities referred to in Paragraph 4 hereinabove be held in the name of LAS VEGAS LAND PARTNERS, LLC, or an associated entity, all of which were and are in reality controlled by DAVID J. MITCHELL and BARNET LIBERMAN.

46. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC received its equity interests in the asset protection entities gratuitously, or for wholly inadequate consideration.

47. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC is the nominal holder of the alleged interests, in the entity defendants, and takes its direction from DAVID J. MITCHELL and BARNET LIBERMAN, in managing and operation in the asset protection entities, which exist merely to help Entity Defendants, DAVID J. MITCHELL and BARNET LIBERMAN protect the original assets of LAS VEGAS LAND PARTNERS, LLC from creditors such as Plaintiffs.

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2 48. Plaintiff is informed and believes, that the Entity Defendants are the recipients of
3 fraudulent transfers of real property, monies, and other valuable assets as hereinafter alleged.

4 49. Nype obtained a judgment against LVLP on or about April 10, 2015, and initiated
5 post-judgment collection and discovery efforts during the Summer of 2015.

6 50 The first post-judgment discovery documentation received by NYPE were various
7 tax returns and limited related information for LVLP, subsequently followed by various bank
8 statements and financial ledger documentation, spanning approximately late August, 2015 through
9 and including November 2015.
10

11 51. Most of the documentation so produced was already stale dated even when
12 produced, for example, the bank statements only being current through early 2014, SAID
13 documentation being produced in late 2015.
14

15 52. While the documentation produced in the latter half of 2015 disclosed some
16 suspicious circumstances and questionable transactions, it became clear that substantial additional
17 source document would be required to flesh out and understand precisely what had occurred.

18 53. Based on a preliminary review of the newly disclosed bank statements and ledgers,
19 it was noted that there was a comingling of funds related to various payments that appear to be
20 made on behalf of other entities. Although not all of the canceled checks were provided, the bank
21 statements of Las Vegas Land Partners, LLC located at Bates LVLP01-00001 to LVLP 08-00016
22 are indicative of usage by numerous related party entities. An example of the comingling can be
23 found at LVLP 07-00047, more specifically checks number 1287, 1288 and 1289 payable to the
24 Clark County Treasurer for parcels that do not appear to be recorded in the name of Las Vegas
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2 Land Partners, LLC and LVLP07-00048 more specifically checks number 1292 and 1293 payable
3 to Delaware Secretary of State to register other entities.

4 54. Documents provided labeled lvlp3a, a Las Vegas Land Partners, LLC document
5 consisting of a simple check register covering the period 1/13/11 to 4/27/15 also supports that
6 conclusion with the same date, payee and dollar amount information found on the checks.
7

8 58. A review of the full tax returns of LVLP Holdings, LLC provided at Bates
9 LVLP09-00001 to LVLP17-0064 Forms 1065 for calendar years 2005 to 2013 was first possible
10 in the late fall of 2015 as well. The tax returns are indicative of a combination and consolidation
11 of several related party Limited Liability Companies. The organizational documents located at
12 Bates LVLP18-00001 to LVLP19-00202 indicate that Las Vegas Land Partners, LLC is the single
13 equity member of Wink One, LLC and Livework Manager, LLC (who is the sole equity member
14 of Livework, LLC).

15 56. The members of Las Vegas Land Partners, LLC are Barnet Liberman and David
16 Mitchell (Bates LVLP19-00033-35).

17 57. There is no explanation for the usage of "LVLP Holdings, LLC" as the filing entity
18 for the tax returns. There are numerous real estate parcels, equity interests and sources of income
19 arising from the various consolidated entities listed on the tax returns of LVLP Holdings, LLC
20 that are not traceable to the ledgers provided by Las Vegas Land Partners, LLC.

21 58. Additionally there are numerous known sources of cash flow for example arising
22 from Wink One, LLC related to the RTC Lease that are not traceable to the accounting records.

23 59. During the Summer of 2016, NYPE again promulgated detailed specific written
24 discovery requests to LVLP, which requests were partially complied with in the form of additional
25 tax returns and ledger documentation, but mostly objected to.
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2 60. NYPE found it necessary to file a Motion to Compel discovery, and an Order
3 resulting from many months of contested discovery disputes was finally entered by the Court on
4 or about February 2, 2017.

5 61. Some additional documentation was ultimately produced, after repeated efforts by
6 NYPE, which disclosed additional improprieties, misconduct, and transactions by LVLP and its
7 principals designed to effectively render LVLP insolvent and unable to respond in damages,
8 which transactions will be discussed, in part, hereinafter.

9 62. The Order Compelling Discovery of February 2, 2017 has only been partially
10 complied with, and there remain substantial deficiencies and blocks of documentation that could
11 and should have been produced, but have not been, at least as of the date of LVLP's bankruptcy
12 filing.

13 64. Even the documents produced from January through March, 2017, are inherently
14 contradictory and do not match the data reported on the tax returns.

15 64. As one key example, however, of the importance of having accurate and complete
16 source records, attached hereto as Exhibit "1" and by this reference incorporated herein is a
17 certification by LVLP's New Jersey CPA for the first time disclosing that various affiliated and
18 associated entities are disregarded for tax and accounting purposes, and are all reported through
19 LVLP Holdings, LLC's business tax return.

20 65. The partial and incomplete documentation produced between the Fall of 2015, and
21 into 2017, did show extensive co-mingling, a failure to keep separate and adequate accounting
22 records for various affiliates and associated companies, a decided lack of concrete detail, and an
23 absolute failure to account for and explain various cash flow entries.

24 66. Given the incomplete documentation produced by defendants, the Plaintiff is
25 unable to determine where LVLP's cash flow is coming from, or where the resulting cash flow is
26 being applied.

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2 67. On information and belief, the documentation available shows that LVLP, its
3 affiliates and associated entities were shifting money between one entity and the other to pay bills
4 and cover expenses as needed, and not in any coherent or recurring logical form.

5 68. The data that has been provided does not match LVLP tax returns, for example
6 failing to disclose substantial income.

7 69. Part of the data provided appears to account for, in part, the financial transactions
8 and relationship between LVLP and its joint venture partner (the entity which Nype procured to
9 provide financing for LVLP's projects), Forest City Enterprises.

10 70. The data available to date appears to show that arrangements were made with
11 Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build equity,
12 resulting in an absence of actual cash receipt by LVLP.

13 71. Despite what those records are showing, however, the tax returns are wholly silent
14 and fail to disclose the accrual of any imputed income or equity with respect to the Forest City
15 Joint Ventures, despite the fact that the joint venture documents suggest that LVLP's share of
16 revenue is being used to pay down debt and build equity, which would legally result in the accrual
17 of taxable income which the law requires to be accurately reported

18 72. Indeed, until the preliminary information was received in the Fall of 2015 as
19 supplemented by the early 2017 production, LVLP, based on the tax returns and documentation it
20 had previously supplied, continued to operate, appeared to have assets, appeared to be paying
21 taxes as accrued, and continued to vigorously defend itself.

22 73. One particular item first disclosed in the late Winter of 2017 is a statement by the
23 acknowledged accountant for LVLP that numerous of the other defendant entities herein are
24 "disregarded for tax purposes", meaning, on information and belief, that their revenue and
25 expenses, as well as income and liabilities, while being nominally contained in a separate legal
26 entity, are a practical matter, and as recognized by Federal Taxing Authorities, one and the same
27 as LVLP. See Exhibit "1".
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2 74. Additional discovery information fleshed out in 2016 and early 2017 includes the
3 fact that LVLP has been effectively insolvent since 2015, despite showing millions of dollars of
4 network on its tax returns, and has been forced to pay its attorneys in both the prior litigation and
5 the present litigation through personal checks and credit cards of Mitchell and/or Liberman, or
6 through affiliate entities.

7 75. Much of the newly acquired financial data also disclosed that corporate filing fees
8 for numerous of the defendants herein had been paid, *ad hoc*, from LVLP bank accounts,
9 interchangeably, despite said entities nominally maintaining or claiming separate legal status.

10 76. Plaintiffs RUSSELL L. NYPE and the REVENUE PLUS, LLC (hereinafter
11 collectively referred to as "Nype") were Defendants in a case originally initiated by current
12 Defendants, LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC and ZOE
13 PROPERTIES, LLC in the Eighth Judicial District Court in Clark County, Nevada under Case
14 No. A551073, which case commenced on or about November 2, 2007 (hereinafter the "First
15 Case").

16 77 Nype counterclaimed in that case with regard to his prior business dealings with
17 LAS VEGAS LAND PARTNERS, LLC, its associate entities, and its principals, BARNET
18 LIBERMAN (hereinafter "Liberman") and DAVID J. MITCHELL (hereinafter "Mitchell"),
19 seeking compensation which he had been promised and which he had earned during the course of
20 the parties ongoing business dealings regarding the development of numerous Las Vegas real
21 estate holdings.

22 78. On information and belief, during the pendency of those proceedings, and after
23 defaulting on their obligations to Nype, Liberman and Mitchell undertook the process of creating
24 various affiliated and associate entities, including but not limited to several of the asset protection
25 entities as alleged in Paragraph 43 hereinabove, utilizing sophisticated corporate and asset
26 protection counsel.

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2 79. After years of protracted litigation, Nype ultimately obtained a judgment against
3 LAS VEGAS LAND PARTNERS, LLC on or about April 10, 2015 in the principal amount of
4 \$2,608,797.50.

5 80. As alleged hereinabove, upon information and belief, pursuant to the Asset
6 Protection Scheme, on various dates spanning 2007 through the present, Defendant LAS
7 VEGAS LAND PARTNERS, LLC commenced multiple real property and equity ownership
8 transfers to convey its valuable real property interests, to one or more the asset protection entities,
9 which asset protection entities continue to hold the subject real property or which have
10 subsequently transferred such to additional entities in which Liberman, Mitchell, and or LVLV
11 hold substantial beneficial interests.

12 81. In addition to the numerous real property conveyances alleged hereinabove, and
13 totally unbeknownst to Nype at the time LAS VEGAS LAND PARTNERS, LLC transferred
14 literally millions of dollars in monies and liquidated funds to its principals, LIBERMAN and
15 MITCHELL, during a time that LAS VEGAS LAND PARTNERS, LLC, knew or reasonably
16 should have known of Nype's substantial monetary claims against it.

17 82. The real estate and monetary transfers alleged hereinabove effectively rendered
18 LAS VEGAS LAND PARTNERS insolvent, and unable to pay its debts on a regular basis as they
19 matured, including but not limited to the monies that the Eighth Judicial District Court has
20 determined are owed to Nype.

21 83. Upon information and belief, the aforesaid actions of all Defendants were
22 undertaken consciously, knowingly, willfully, and specifically in an effort to defeat and avoid
23 Plaintiffs' rights which were being pursued in the First Case.

24 84. Upon information and belief, the Trustee is informed and believes and thereon
25 alleges that at all times herein mentioned Defendants, **LIBERMAN AND MITCHELL** were and
26 are the alter ego of LAS VEGAS LAND PARTNERS, LLC, that said Defendant did and still does
27 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
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2 still exists a unity of ownership between them; that the individuality and separateness of each
3 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
4 framework which LAS VEGAS LAND PARTNERS, LLC used and still use to conduct their
5 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
6 and fraud upon the Trustee will result if the theoretical separateness of LAS VEGAS LAND
7 PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being
8 sought herein.

9 85. Upon information and belief, the Trustee is informed and believes and thereon
10 alleges that at all times herein mentioned Defendants, **MEYER PROPERTY, LLC** was and is
11 the alter ego of MEYER PROPERTY, LLC, that said Defendants did and still do dominate,
12 influence and control of MEYER PROPERTY, LLC, that there existed and still exists a unity of
13 ownership between them; that the individuality and separateness of each entity was and remains
14 non-existent; that each such entity was and remains a mere shell and naked framework which LAS
15 VEGAS LAND PARTNERS, LLC, MITCHELL and LIBERMAN used and still use to conduct
16 their business affairs; that each such entity is and remains inadequately capitalized; and that an
17 injustice and fraud upon the Trustee will result if the theoretical separateness of MEYER
18 PROPERTY, LLC entity is not disregarded and the said Defendant held liable for all relief being
19 sought herein.

20 86. Upon information and belief, the Trustee is informed and believes and thereon
21 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC,**
22 **LIBERMAN and MITCHELL** were and are the alter ego of ZOE PROPERTY, LLC, that said
23 Defendants did and still do dominate, influence and control of **ZOE PROPERTY, LLC**, that
24 there existed and still exists a unity of ownership between them; that the individuality and
25 separateness of each entity was and remains non-existent; that each such entity was and remains a
26 mere shell and naked framework which LAS VEGAS LAND PARTNERS, LLC, MITCHELL and
27 LIBERMAN used and still use to conduct their business affairs; that each such entity is and
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2 remains inadequately capitalized; and that an injustice and fraud upon the Trustee will result if the
3 theoretical separateness of **ZOE PROPERTY, LLC** entity is not disregarded and the said
4 Defendant held liable for all relief being sought herein.

5 87. Upon information and belief, the Trustee is informed and believes and thereon
6 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
7 **LIBERMAN and MITCHELL** were and are the alter ego of **LEAH PROPERTY, LLC**, that
8 said Defendants did and still do dominate, influence and control of **LEAH PROPERTY, LLC**, that
9 there existed and still exists a unity of ownership between them; that the individuality and
10 separateness of each entity was and remains non-existent; that each such entity was and remains a
11 mere shell and naked framework which **LAS VEGAS LAND PARTNERS, LLC**, **MITCHELL** and
12 **LIBERMAN** use and still use to conduct their business affairs; that each such entity is and
13 remains inadequately capitalized; and that an injustice and fraud upon the Trustee will result if the
14 theoretical separateness of **LEAH PROPERTY, LLC**, if entity is not disregarded and the said
15 Defendant held liable for all relief being sought herein.

16 88. Upon information and belief, the Trustee is informed and believes and thereon
17 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
18 were and are the alter ego of **WINK ONE, LLC**, that said Defendant did and still does dominate,
19 influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists
20 a unity of ownership between them; that the individuality and separateness of each entity was and
21 remains non-existent; that each such entity was and remains a mere shell and naked framework
22 which **WINK ONE, LLC** used and still use to conduct their business affairs; that each such entity
23 is and remains inadequately capitalized; and that an injustice and fraud upon the Trustee will
24 result if the theoretical separateness of **WINK ONE, LLC** if entity is not disregarded and the said
25 Defendant held liable for all relief being sought herein

26 89. Upon information and belief, the Trustee is informed and believes and thereon
27 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
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2 were and are the alter ego of **LIVE WORK, LLC**, that said Defendant did and still does
3 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
4 still exists a unity of ownership between them; that the individuality and separateness of each
5 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
6 framework which **LIVE WORK, LLC** used and still use to conduct their business affairs; that
7 each such entity is and remains inadequately capitalized; and that an injustice and fraud upon the
8 Trustee will result if the theoretical separateness of **LIVE WORK, LLC** if entity if entity is not
9 disregarded and the said Defendant held liable for all relief being sought herein.

10 90. Upon information and belief, the Trustee is informed and believes and thereon
11 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
12 were and are the alter ego of **LIVE WORK MANAGER, LLC**, that said Defendant did and still
13 does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there
14 existed and still exists a unity of ownership between them; that the individuality and separateness
15 of each entity was and remains non-existent; that each such entity was and remains a mere shell
16 and naked framework which **LIVE WORK MANAGER, LLC** used and still use to conduct their
17 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
18 and fraud upon the Trustee will result if the theoretical separateness of **LIVE WORK**
19 **MANAGER, LLC** entity is not disregarded and the said Defendant held liable for all relief being
20 sought herein.

21 91. Upon information and belief, the Trustee is informed and believes and thereon
22 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
23 was and are the alter ego of **AQUARIUS OWNER, LLC**, that said Defendant did and still does
24 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
25 still exists a unity of ownership between them; that the individuality and separateness of each
26 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
27 framework which **AQUARIUS OWNER, LLC** used and still use to conduct their business
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2 affairs; that each such entity remains inadequately capitalized; and that an injustice and fraud upon
3 the Trustee will result if the theoretical separateness of **AQUARIUS OWNER, LLC** entity is not
4 disregarded and the said Defendant held liable for all relief being sought herein.

5 92. Upon information and belief, the Trustee is informed and believes and thereon
6 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
7 were and are the alter ego of **LVLV HOLDINGS, LLC**, that said Defendant did and still does
8 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
9 still exists a unity of ownership between them; that the individuality and separateness of each
10 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
11 framework which **LVLV HOLDINGS, LLC** used and still use to conduct their business affairs;
12 that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon
13 the Trustee will result if the theoretical separateness of **LVLV HOLDINGS, LLC** entity is not
14 disregarded and the said Defendant held liable for all relief being sought herein.

15 93. Upon information and belief, the Trustee is informed and believes and thereon
16 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
17 were and are the alter ego of **MITCHELL HOLDINGS, LLC**, that said Defendant did and still
18 does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there
19 existed and still exists a unity of ownership between them; that the individuality and separateness
20 of each entity was and remains non-existent; that each such entity was and remains a mere shell
21 and naked framework which **MITCHELL HOLDINGS, LLC** used and still use to conduct their
22 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
23 and fraud upon the Trustee will result if the theoretical separateness **MITCHELL HOLDINGS,**
24 **LLC** entity is not disregarded and the said Defendant held liable for all relief being sought herein.

25 94. Upon information and belief, the Trustee is informed and believes and thereon
26 alleges that at all times herein mentioned, **LAS VEGAS LAND PARTNERS, LLC**, is and was the
27 alter ego of **305 LAS VEGAS, LLC**, that **LVLV** did and still does dominate, influence and
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2 control of 305 Las Vegas, LLC, that there existed and still exists a unity of ownership between
3 them; that the individuality and separateness of each entity was and remains non-existent; LVLV
4 was and remains a mere shell and naked framework which **305 LAS VEGAS, LLC**, used and
5 still use to conduct their business affairs; that an injustice and fraud upon the Trustee will result if
6 the theoretical separateness of **LAS VEGAS LAND PARTNERS, LLC** entity is not disregarded
7 and the said Defendant held liable for all relief being sought herein.

8 95. Upon information and belief, the Trustee is informed and believes and thereon
9 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
10 was and are the alter ego of **LIVE WORKS TIC SUCCESSOR, LLC**, that said Defendant did
11 and still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that
12 there existed and still exists a unity of ownership between them; that the individuality and
13 separateness of each entity was and remains non-existent; that each such entity was and remains a
14 mere shell and naked framework which **LIVE WORKS TIC SUCCESSOR, LLC** used and still
15 use to conduct their business affairs; that each such entity is and remains inadequately capitalized;
16 and that an injustice and fraud upon the Trustee will result if the theoretical separateness of **LAS**
17 **VEGAS LAND PARTNERS, LLC** entity is not disregarded and the said Defendant held liable for
18 all relief being sought herein.

19 96. Upon information and belief, the Trustee is informed and believes and thereon
20 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
21 were and are the alter ego of **FC/LV VEGAS, LLC**, that said Defendant did and still does
22 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
23 still exists a unity of ownership between them; that the individuality and separateness of each
24 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
25 framework which **FC/LV VEGAS, LLC** used and still use to conduct their business affairs; that
26 each such entity is and remains inadequately capitalized; and that an injustice and fraud upon the
27 Trustee will result if the theoretical separateness of **LAS VEGAS LAND PARTNERS, LLC** entity
28

1 is not disregarded and the said Defendant held liable for all relief being sought herein.

2 97. Upon information and belief, the Trustee is informed and believes and thereon
3 alleges that at all times herein mentioned Defendants, LAS VEGAS LAND PARTNERS, LLC,
4 were and are the alter ego of CASINO COOLIDGE, LLC, that said Defendant did and still does
5 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
6 still exists a unity of ownership between them; that the individuality and separateness of each
7 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
8 framework which CASINO COOLIDGE, LLC used and still use to conduct their business
9 affairs; that each such entity is and remains inadequately capitalized; and that an injustice and
10 fraud upon the Trustee will result if the theoretical separateness of LAS VEGAS LAND
11 PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being
12 sought herein.

13 98. This New Case is effectively an extension and development of the first litigation,
14 and is an effort by the Trustee to avoid the wrongful misconduct of Defendants and each of them,
15 in attempting to avoid LVLP's creditor's rights and improperly dissipate the assets of LAS
16 VEGAS LAND PARTNERS, LLC, which were, are, and should be available to satisfy various
17 creditor claims.

18 FIRST CLAIM FOR RELIEF

19 (Constructive Trust)

20 99. The Trustee incorporates by reference paragraphs 1 through 98 as though fully
21 set forth.

22 100. Pursuant to the pending litigation in the First Case, it was understood that options
23 or equity in various Real Estate parcels owned by LAS VEGAS LAND PARTNERS, LLC in or
24 about 2006, as well as "Choses In Action" such as equity ownership in various affiliated entities
25 would be available to satisfy Plaintiff's judgment.
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2 101. Defendants knew or reasonably should have known, that the subject property
3 interests were valuable, and that the legitimate equity in the subject real property or beneficial
4 ownership of the affiliate entities and limited liability ownership interest would be sufficient to
5 satisfy Nype's claim, but for the fraudulent conveyances alleged herein.

6 102. Defendants transferred, hypothecated and encumbered various real property for
7 improper purposes and inadequate consideration.

8 103. All of the foregoing facts make it just and equitable that this court impose and
9 declare a constructive trust upon the subject property interest, and any proceeds therefrom, in
10 favor of the Plaintiffs and the Trustee.

11 104. The court can and should declare a lien against the subject properties, order the
12 sale thereof, and/or order the payment of all rents or monies received from the subject property to
13 Plaintiffs and the Trustee herein.

14 105. It has been necessary for Trustee to retain the services of an attorney to prosecute
15 this action and Plaintiff is therefore entitled to an award of reasonable attorneys' fees

16 **SECOND CLAIM FOR RELIEF**

17 **(Fraudulent Conveyance)**

18 106. The Trustee incorporates by reference paragraphs 1 through 105 as though fully
19 set forth.

20 107. The Trustee is informed and believes, and on that basis alleges that Defendants
21 have taken numerous actions to avoid satisfying various creditor claims against LAS VEGAS
22 LAND PARTNERS, LLC.

23 108. The Trustee alleges on information and belief, that in order to avoid potential
24 execution against real estate interests, *inter alia*, LAS VEGAS LAND PARTNERS, LLC took
25 steps to hypothecate and transfer numerous property interests and valuable interests to the other
26 Defendants herein.

1
2 109. The Trustee is informed and believes, and on that basis alleges that such transfers
3 by Defendants were undertaken in an effort to avoid the adverse financial consequences of
4 Plaintiffs' pending claims, as well as those of other creditors.

5 110. The Trustee is informed and believes, and on that basis alleges that the
6 aforementioned transfers were gratuitous, or for inadequate or disguised consideration, made
7 without obligation, and made with an intent to deprive Plaintiff's and other creditors of their
8 ability to recover such funds directly from LAS VEGAS LAND PARTNERS, LLC in connection
9 with the monies owed.

10 111. As a result of the aforementioned acts of Defendants, Plaintiffs and the Trustee are
11 entitled to a Judgment against Defendants, jointly and severally, in an amount in excess of
12 \$15,000.00.

13 112. On or about August 14, 2014, during the course of proceedings initiated to enforce
14 and collect upon the judgment in the First Case, Defendant LAS VEGAS LAND PARTNERS,
15 LLC first provided tax returns and detail financial information which revealed to Nype, for the
16 first time, that it had transferred its interest in numerous real estate parcels, as well as many
17 millions of dollars, to the entity defendants and/or Liberman and Mitchell, during the ongoing
18 pendency of the first case.

19 113. In making such transfers, LAS VEGAS LAND PARTNERS, LLC, and Defendants
20 MITCHELL and LIBERMAN have acted with the actual intent to hinder delay and to defraud
21 their creditors, including Nype, but fraudulently transferring assets to insiders and the entity
22 defendants.

23 114. The Trustee lacks an adequate remedy at law because, unless the relief sought in
24 this complaint is granted, LAS VEGAS LAND PARTNERS, LLC with the aid of the Defendants
25 herein will have succeeded in fraudulently transferring its assets to insiders and/or related entities,
26 depriving creditors of the opportunity to collect monies due and owing from LAS VEGAS LAND
27 PARTNERS, LLC.
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115. The Trustee has an high probability of success on the merits in this action.

116. The aforesaid transfer of assets to insiders and/or the entity defendants was made with actual intent to hinder, delay or defraud creditors, most significantly Nype, and these transfers therefore constitute fraudulent transfers in violation of NRS 112.180.

117. LAS VEGAS LAND PARTNERS, LLC did not receive reasonably equivalent value for the transfers herein alleged.

118. LAS VEGAS LAND PARTNERS, LLC and its principals intended to incur or reasonably should have believed they would incur debts beyond its ability to pay the same as they become due, and thus the transfers at issue are transfers in violation of Nevada law.

119. Because of the special circumstances of this case, in which LAS VEGAS LAND PARTNERS, LLC is liable for a judgment it has consistently ignored and avoided, having committed fraud to avoid the judgment and its debts, and the hiding assets, and also constituting a risk of further affirmative frustration of valid efforts by Nype and other creditors to collect upon their claims, the Trustee is entitled to:

- (1) The appointment of receiver to take possession of the assets of LVLP, LLC;
- (2) An injunction against further dissipation, disposition, or assignment of any and all assets and property owned by LAS VEGAS LAND PARTNERS, LLC;
- (3) Any other relief that the circumstances may require, including a declaration that the transfers in question are void, and that the assets in question are subject to execution by Nype.

120. It has been necessary for Trustee to retain the services of an attorney to prosecute this action, and Trustee is, therefore, entitled to reasonable attorneys' fees.

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THIRD CLAIM FOR RELIEF

(Civil Conspiracy)

121. The Trustee incorporates by reference paragraphs 1 through 120 as though fully set forth.

122 As alleged hereinabove, and upon information and belief, the transfer of the subject real estate and substantial monetary amounts were undertaken by Defendants with full knowledge as to the relevant circumstances and in an effort to participate in transactions in derogation of the rights of creditors.

123. The knowing and willful conduct of the entity Defendants in agreeing to receive the subject real property and act as a nominee for said LAS VEGAS LAND PARTNERS, LLC, LIBERMAN and MITCHELL constitute acts of civil conspiracy.

124. The Defendants, and each of them worked together in concerted actions with the intent to accomplish an unlawful purpose, vis a vis Plaintiffs and other creditors.

125. The purpose of the unlawful, concerted actions of Defendants was intended to, or would likely result in direct harm to the creditors of LVLV.

126. As a direct and proximate result of the aforesaid civil conspiracy, undertaken between the Defendants, Plaintiffs and the Trustee have been damaged in an amount in excess of \$15,000.00.

127. As alleged hereinabove, upon information and belief, Defendants' conduct was willful, knowing, intentional, and malicious, as a matter of law, entitling Plaintiffs and the Trustee to recover exemplary damages in an amount in excess of \$15,000.00.

128. That it has been necessary for the Trustee to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to reasonable attorneys' fees.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief)

129. The Trustee incorporates by references Paragraphs 1 through 128 as though fully set forth herein.

130. A true and ripe controversy exists as to the dispute, and declaratory relief pursuant to NRS 30.040 is necessary to declare the respective rights, responsibilities, and obligations between the parties as a consequence of Plaintiffs' judgment against LAS VEGAS LAND PARTNERS, LLC, and as relates to the various transactions undertaken by Defendants, including but not limited to transactions involving various parcels of valuable Las Vegas Real Estate.

131. For all of the reasons set forth hereinabove, Defendants have acted wrongfully and in violation of its creditors', and a direct declaration as to the invalidity of Defendants' transfers, and such should be determined and declared by the court.

132. That it has been necessary for the Trustee to retain the services of an attorney to prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

FIFTH CLAIM FOR RELIEF

(Alter Ego)

133. Plaintiff incorporates by references Paragraphs 1 through 132 as though fully set forth herein.

134. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIAS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LV VEGAS, LLC, CASINO COOLIDGE, LLC, and each of them, were and remain the alter-egos of each other; that said Defendants did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and

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2 separateness of each entity was and remains non-existent; that each such entity was and remains a
3 mere shell and naked framework which the other Defendants used and still use to conduct their
4 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
5 and fraud upon creditors will result if the theoretical separateness of the Defendant entities is not
6 disregarded and each such Defendant held liable for all relief being sought herein.

7 135. Upon information and belief, to the extent that one or more of the Defendant
8 entities is nominally owned or operated by or through LAS VEGAS LAND PARTNERS, LLC, or
9 Defendants LIBERMAN or MITCHELL with respect to one or more of the Defendant entities, which
10 entities as a practical matter exist with functional unity of ownership in said LAS VEGAS LAND
11 PARTNERS, LLC or Defendants LIBERMAN or MITCHELL, the true and factual individuality and
12 separateness of each such entity was and remains non-existent; each such entity was and remains a
13 mere shell and naked framework, which LAS VEGAS LAND PARTNERS, LLC and Defendants
14 LIBERMAN or MITCHELL utilize, through the offices of said Defendants LAS VEGAS LAND
15 PARTNERS, LLC, LIBERMAN or MITCHELL and/or through nominees and others to conduct their
16 business affairs. Each such entity is, upon information and belief, merely another nominal
17 manifestation of the business and financial affairs of LAS VEGAS LAND PARTNERS, LLC and
18 the Defendants LIBERMAN or MITCHELL, and to recognize any such separate entity would work
19 as separate and distinct from LAS VEGAS LAND PARTNERS, LLC and Defendants LIBERMAN
20 or MITCHELL, an injustice and fraud upon creditors, to the extent the theoretical or putative
21 separateness of such entity is not disregarded and said nominal Defendants held liable for all the relief
22 being sought herein.

23 136. As a matter of both statutory common law, and prior declarations of the Eighth
24 Judicial District Court, it is appropriate that the Court further determine and declare that all of the
25 aforesaid entities be held to be the Alter Egos of LAS VEGAS LAND PARTNERS, LLC and of
26 Defendants LIBERMAN or MITCHELL, and that therefore the various Defendants named herein can
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2 and should be jointly and severely liable to the Plaintiffs and Trustee with regard to all claims
3 asserted.

4 137. That it has been necessary for the Trustee to retain the services of an attorney to
5 prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

6 **WHEREFORE**, Plaintiff prays for judgment against Defendants and each of them
7 as follows:

- 8 1. For a sum in excess of \$15,000.00;
- 9 2. For exemplary damages in an amount in excess of \$10,000.00;
- 10 3. For the imposition of a constructive trust upon the various parcels of real property and
11 valuable equity ownership interests formerly owned by LAS VEGAS LAND
12 PARTNERS, LLC for the benefit of Plaintiff;
- 13 4. For an order requiring the sale of the parcels of real estate and valuable ownership
14 interest and an order directing the payment of all rents with regard to the subject real
15 property be made to the order of the Trustee herein;
- 16 5. For the Appointment of a Receiver;
- 17 6. For interest upon all damages which Plaintiffs and the Trustee recovers at the Nevada
18 Statutory rate.
- 19 7. For a declaration as to the invalidity of Defendants' transactions as regards to the
20 various valuable real estate interests and equity ownership interests formerly owned
21 by LAS VEGAS LAND PARTNERS, LLC;
- 22 8. For a determination that the Defendants are the alter egos of each other , and should
23 all be held liable to Plaintiff, jointly and severally, for the damages sought herein.
- 24 9. For a declaration that the actions by LAS VEGAS LAND PARTNERS, LLC, in
25 conjunction with the Defendants herein, to convey valuable property and monies to
26 other Defendants with the intent to deprive creditors of their ability to recover funds
27 was undertaking in a knowing, willful, intentional, and malicious manner, which
28

under Nevada law constitute malice and is sufficient grounds to invoke the availability of exemplary damages against Defendants, and each of them.

10. As a consequence of the willful malicious and intentional misconduct of the Defendants and each of them, Plaintiffs and the Trustee are entitled to recover exemplary damages from each Defendant in accordance with Nevada Law, in an amount in excess of \$15,000.00, the precise amount to be proven at time of trial.

11. For reasonable attorneys' fees for the prosecution of this suit; and

12. For such other and further relief as the Court may deem just and proper.

DATED this ____ day of November, 2019.

JOHN W. MUIJE & ASSOCIATES

By: _____
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under Nevada law constitute malice and is sufficient grounds to invoke the availability of exemplary damages against Defendants, and each of them.

10. As a consequence of the willful malicious and intentional misconduct of the Defendants and each of them, Plaintiffs and the Trustee are entitled to recover exemplary damages from each Defendant in accordance with Nevada Law, in an amount in excess of \$15,000.00, the precise amount to be proven at time of trial.

11. For reasonable attorneys' fees for the prosecution of this suit; and

12. For such other and further relief as the Court may deem just and proper.

DATED this ____ day of November, 2019.

JOHN W. MUIJE & ASSOCIATES

By: _____

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EXHIBIT B

Electronically Filed
11/18/2019 11:21 AM
Steven D. Grierson
CLERK OF THE COURT



1 **ORDR**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

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9 Email: jmuije@muijelawoffice.com

10 *Attorneys for Proposed Plaintiff- In-Intervention*

11 **SHELLEY D, KROHN**

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **RUSSELL L. NYPE AND REVENUS PLUS,**
15 **LLC**

16 **Plaintiffs,**

17 **vs.**

18 **DAVID J. MITCHELL; BARNET LIBERMAN; LAS**
19 **VEGAS LAND PARTNERS, LLC; MEYER**
20 **PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH**
21 **PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,**
22 **LLC; LIVE WORK MANAGER, LLC; AQUARIUS**
23 **OWNER, LLC; LVLP HOLDINGS, LLC;**
24 **MITCHELL HOLDINGS, LLC; LIBERMAN**
25 **HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE**
26 **WORKS TIC SUCCESSOR, LLC; CASINO**
27 **COOLIDGE LLC; DOES I through III, and ROE**
28 **CORPORATIONS I through III, inclusive,**

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: Nov. 18, 2019

Time of Hearing: 9:00 a.m.

ORDER GRANTING TRUSTEE'S MOTION TO INTERVENE

This matter came on for hearing on Trustee's Motion to Intervene on the time and date noted above. JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, appearing on behalf of Proposed Plaintiff-In-Intervention, SHELLEY D, KROHN.

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1 IT IS HEREBY ORDERD, ADJUDGED AND DECREED, that Proposed Plaintiff-In-
2 Intervention, SHELLEY D. KROHN's, Motion to Intervene be and the same is hereby
3 GRANTED.

4 DATED this 18th day of Nov., 2019

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9 DISTRICT JUDGE
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11 Submitted by:

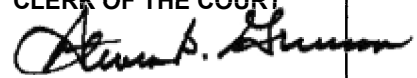
12 JOHN W. MUIJE & ASSOCIATES
13
14

15 BY: 

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24 Intervention SHELLEY D. KROHN
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EXHIBIT C

**COMP**

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CLARK COUNTY, NEVADARUSSELL L. NYPE AND REVENUS PLUS,
LLC

CASE NO: A-16-740689-B

Plaintiffs,

DEPT. NO: XI

vs.

**COMPLAINT IN INTERVENTION
FOR:**DAVID J. MITCHELL; BARNET LIBERMAN;
MEYER PROPERTY, LTD.; ZOE PROPERTY,
LLC; LEAH PROPERTY, LLC; WINK ONE, LLC;
LIVE WORK, LLC; LIVE WORK MANAGER,
LLC; AQUARIUS OWNER, LLC; LVLV
HOLDINGS, LLC; MITCHELL HOLDINGS, LLC;
305 LAS VEGAS, LLC; LIVE WORKS TIC
SUCCESSOR, LLC; CASINO COOLIDGE LLC;
DOES I through III, and ROE CORPORATIONS I
through III, inclusive,

1. **CONSTRUCTIVE TRUST;**
2. **FRAUDULENT CONVEYANCE;**
3. **CONSPIRACY TO DEFRAUD;**
4. **DECLARATORY RELIEF; AND**
5. **ALTER EGO**

**ARBITRATION EXEMPT
(EQUITABLE RELIEF)**

Mitchell Defendants.

SHELLEY D. KROHN, U.S. BANKRUPTCY
TRUSTEE

Proposed Plaintiff-In-Intervention

COMES NOW, SHELLEY D. KROHN, U.S. Bankruptcy Trustee (hereinafter referred to as
"TRUSTEE"), and as and for causes of action against the Defendants, DAVID J. MITCHELL;
BARNET LIBERMAN; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC;

1 WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC;
2 LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC
3 SUCCESSOR, LLC; FC/LW VEGAS, LLC; CASINO COOLIDGE LLC, alleges and shows as follows:

4
5 **GENERAL FACTUAL ALLEGATIONS**

6 1. The Trustee was duly appointed to act as the Trustee in the Bankruptcy Case of
7 Las Vegas Land Partners, LLC, Case No. BK-19-15333-mkn (hereinafter referred to as
8 “TRUSTEE”).

9 2. Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter
10 “NYPE”), a New York Limited Liability Company.

11 3. Defendant, DAVID J. MITCHELL (hereinafter “Mitchell”), is an adult resident of
12 New York.

13 4. Defendant, BARNETT LIBERMAN (hereinafter “Liberma”), is an adult resident
14 of New York.

15 5. Aquarius Owner, LLC is or was a Delaware limited liability company registered to
16 do business in the State of Nevada in November, 2004, and maintained its registration through
17 and including approximately November, 2009.

18 6. On information and belief, Aquarius Owner LLC was owned and directed by
19 Mitchell, Liberman, and/or LVLP.

20 7. In that context, various real property transfers and ownership equity took place
21 between LVLP and/or Aquarius Owner, LLC, during the operative time, and on information and
22 belief, financial distributions and transactions occurred between Aquarius Owner LLC, and its
23 principals on a recurring basis, most of which were never disclosed in publicly available records
24 or documents.

1 8. FC/LW Vegas is or was a Delaware limited liability company registered to do
2 business in the State of Nevada in February 2011 which has maintained registration through the
3 present.
4

5 9. FC/LW, LLC, on information and belief, is an entity beneficially and jointly
6 owned and operated by Liberman, Mitchell, LVLP, LIVE WORK, LLC and non-party Forest City
7 Enterprises, for purposes of developing and managing various real property interest in Southern
8 Nevada.
9

10 10 In that context, various real property transfers and ownership equity took place
11 between LIVE WORK, LLC and/or FC/LW, LLC, during the operative time, and on information
12 and belief, financial distributions and transactions occurred between FC/LV Vegas, LLC, and its
13 principals on a recurring basis, most of which were never disclosed in publicly available records
14 or documents.
15

16 11. Leah Property, LLC is a Delaware limited liability that first registered to do
17 business in Southern Nevada in approximately February, 2005, and continued to be active and
18 operate in the Southern Nevada area through and including February, 2015.
19

20 13. On information and belief, Leah Property LLC is owned, managed, and operated
21 by Liberman, at all relevant times.
22

23 14. In that context, various real property transfers and ownership equity took place
24 between LVLP and/or Leah Property, LLC, during the operative time, and on information and
25 belief, financial distributions and transactions occurred between Leah Property, LLC and its
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1 principals on a recurring basis, most of which were never disclosed in publicly available records
2 or documents..
3

4 15. Live Work LLC is a Delaware limited liability company who first became active in
5 Southern Nevada in or about April, 2005, and in fact was a plaintiff in the original underlying
6 lawsuit with LVLP versus the plaintiffs herein. Live Work, LLC, on information and belief,
7 continued to be active and operating in Southern Nevada through and including approximately
8 April, 2012.
9

10 16. On information and belief, Live Work, LLC was owned, operated, and managed by
11 Liberman, Mitchell, LVLP, Live Work Manager, LLC, and/or Mitchell Holdings, and was an
12 active.
13

14 17. In that context, various real property transfers and ownership equity took place
15 between LVLP and/or Live Work, LLC, during the operative time, and on information and belief,
16 financial distributions and transactions occurred between Live Work Manager, LLC and its
17 principals on a recurring basis, most of which were never disclosed in publicly available records
18 or documents.
19

20 18. Livework Manager, LLC was a Delaware Limited Liability that first registered to
21 do business in the State of Nevada in approximately April, 2005, and continued active and in
22 business in Southern Nevada through the present.

23 19. Livework Manager, LLC was owned, operated and managed by, on information
24 and belief, by Liberman, Mitchell, and/or LVLP.

25 20. In that context, various real property transfers and ownership equity took place
26 between LVLP and/or Live work Manger, LLC, during the operative time, and on information and
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2 belief, financial distributions and transactions occurred between Livework Manager, LLC and its
3 principals on a recurring basis, most of which were never disclosed in publicly available records
4 or documents.

5 21. Zoe Property, LLC is a Delaware Limited Liability Company that first registered
6 and became active in Southern Nevada in or about November 2004, and in fact was one of the
7 original plaintiffs along with Live Work, LLC and LVLP versus the plaintiffs herein. On
8 information and belief, Zoe Property, LLC operated and continued to be active in Southern
9 Nevada through approximately November, 2007.

11 22. Zoe Property, LLC, was owned, operated and managed by, on information and
12 belief, by Liberman, Mitchell and/or LVLP.

13 23. In that context, various real property transfers and ownership equity took place \
14 \between LVLP and/or Zoe Property, LLC, during the operative time, and on information and
15 belief, financial distributions and transactions occurred between Zoe Property, LLC and its
16 principals on a recurring basis, most of which were never disclosed in publicly available records
17 or documents.

18 24. Wink One, LLC is a Delaware limited liability company that registered to do
19 business in the State of Nevada in approximately April, 2008, and remained active, according to
20 Secretary of State records, through and including approximately April, 2009. Wink One, LLC, on
21 information and belief, was owned, operated and managed by Liberman, Mitchell, and/or LVLP.

22 25,. Wink One, LLC was owned, operated and managed by, on information and belief,
23 by Liberman, Mitchell, and/or LVLP.

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1
2 26. In that context, various real property transfers and ownership equity took place
3 between LVLP and/or Wink One, LLC, during the operative time, and on information and belief,
4 financial distributions and transactions occurred between Wink One, LLC and its principals on a
5 recurring basis, most of which were never disclosed in publicly available records or documents..

6 27. Casino Coolidge, LLC is a Delaware limited liability company that first registered
7
8 to do business in Southern Nevada in or about October, 2014.

9 28. On information and belief, Casino Coolidge, LLC is owned, operated and managed
10 by Liberman, Mitchell, and/or LVLP.

11 29. In that context, various real property transfers and ownership equity took place
12 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on information and
13 belief, financial distributions and transactions occurred between Casino Coolidge, LLC and its
14 principals on a recurring basis, most of which were never disclosed in publicly available records
15 or documents and continues to operate and be active in Southern Nevada through the present.

16 30. In that context, various real property transfers and ownership equity took place
17 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on information and
18 belief, financial distributions and transactions occurred between Casino Coolidge, LLC and its
19 principals on a recurring basis, most of which were never disclosed in publicly available records
20 or documents.

21 31. 305 Las Vegas, LLC is a Delaware limited liability company that first registered
22
23 and qualified to do business in Southern Nevada in approximately April, 2007, and remains active
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25 and doing business in Southern Nevada through the present.
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1 32. On information and belief, 305 Las Vegas, LLC was originally owned, operated
2 and managed by Liberman and/or LVLP.

3 33. In that context, various real property transfers and ownership equity took place
4 between LVLP, its affiliates and/or 305 Las Vegas, LLC, during the operative time, and on
5 information and belief, financial distributions and transactions occurred between 305 Las Vegas,
6 LLC, LVLP and its principals or affiliates on a recurring basis, most of which were never
7 disclosed in publicly available records or documents and continues to operate and be active in
8 Southern Nevada through the present.
9

10 34. In that context, various real property transfers and ownership equity took place
11 between LVLP and its affiliates and/or 305 Las Vegas, LLC, during the operative time, and on
12 information and belief, financial distributions and transactions occurred between 305 Las Vegas,
13 LLC, LVLP and its principals and affiliates on a recurring basis, most of which were never
14 disclosed in publicly available records or documents.
15

16 35. On information and belief, unbeknownst to Plaintiffs, in approximately 2012
17 305 Las Vegas, LLC engaged in an internal transaction resulting in the acquisition of the
18 beneficial interest of Mitchell by a Mr. Win Churchill, and a monetary distribution benefitting
19 Mitchell to the tune of \$7.5 million, all of which Plaintiff has only learned at very recent times.
20

21 36. On information and belief, MEYER PROPERTY, LTD., is fictitious entity that
22 was involved for a relatively short period of time with LEAH PROPERTY, LLC, and in the
23 context thereof participated in real estate transactions resulting in net financial gain to Leah and/or
24 Liberman, Mitchell, and/or LVLP, the specifics of which financial gains were never disclosed nor
25 reasonably discoverable by Plaintiffs herein.
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2 37. In that context, various real property transfers took place between LVLP and/or
3 Meyer Property, LLC, during the operative time, and on information and belief, financial
4 distributions and transactions occurred between Meyer Property, LLC and its principals on a
5 recurring basis, most of which were never disclosed in publicly available records or documents
6 and continues to operate and be active in the State of Nevada through the present.
7

8 38. On information and belief, Mitchell Holdings, LLC is a Delaware limited liability
9 company that never qualified to do business within the State of Nevada, but was used by
10 Defendant Mitchell for purposes of owning Mitchell's equity or beneficial interest in various other
11 defendants, and fuddling money back and forth between such entities, in a matter that would not
12 be detectable or readily discoverable by Plaintiffs or other creditors.
13

14 39. In that context, various real property transfers and ownership equity took place
15 between LVLP and/or Mitchell Holdings, LLC during the operative time, and on information and
16 belief, financial distributions and transactions occurred between Mitchell Holdings, LLC and its
17 principals on a recurring basis, most of which were never disclosed in publicly available records
18 or documents, is a Delaware limited liability that first registered to do business in Nevada in
19 approximately February, 2011, and continues to operate and do business, in good standing,
20 through and including this date.
21

22 40. Live Works TIC Successor, LLC, on information and belief, is an entity in
23 which Liberman, Mitchell, and/or Las Vegas Land Holdings had substantial equity or beneficial
24 interest, and was the ultimate recipient of financial proceeds, monies, emoluments and benefits
25 deriving from Live Work TIC Successor LLC, and a tendency and common agreement entered
26 into between Live Work TIC Successor, LLC and non-party Forest City Enterprises, through
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2 contractual and financial arrangements, referred to as the tenancy in common agreement, and
3 numerous subsequent amendments thereto.

4 41. In that context, various real property transfers and ownership equity took place
5 between LVLP and/or Live Works TIC Successor, LLC during the operative time, and on
6 information and belief, financial distributions and transactions occurred between Live Works TIC
7 Successor, LLC and its principals on a recurring basis, most of which were never disclosed in
8 publicly available records or documents..
9

10 42. Entity Defendants, MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
11 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC;
12 AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305
13 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LW VEGAS, LLC, are
14 believed to be Delaware limited liability companies and/or corporations which have conducted
15 business in the State of Nevada, and are alleged to be owned and/or controlled, in whole or in part
16 by Defendants, LAS VEGAS LAND PARTNERS, LLC, DAVID MITCHELL and BARNET
17 LIBERMAN.
18

19 43. LVLP, LLC, Mitchell, and Liberman, created the various Entity Defendants,
20 MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE,
21 LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP
22 HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC
23 SUCCESSOR, LLC; FC/LV VEGAS, LLC, on information and belief, and used multiple
24 sophisticated counsel for purposes of secreting, hiding, and conveying away valuable assets that
25 were available to satisfy creditors such as Plaintiffs as alleged more specifically hereinafter
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(hereinafter referred to as the "Asset Protection Scheme").

44 .That Plaintiffs do not at present know the true names and identities of those Entity Defendants, both corporate and individual, herein joined by fictitious names, but is informed and believes and therefore alleges that said Entity Defendants, are agents, employees, servants and representatives of the named Entity Defendants, or persons and entities acting in concert with the named Entity Defendants with respect to the premises herein plead, who are liable to the Plaintiffs by reason thereof, and the Plaintiffs pray leave to amend this Complaint to insert their true names and identities with appropriate allegations when the same becomes known.

45. Upon information and belief, part of the Asset Protection Scheme contemplated that the majority of the purported equity interests in the asset protection entities referred to in Paragraph 4 hereinabove be held in the name of LAS VEGAS LAND PARTNERS, LLC, or an associated entity, all of which were and are in reality controlled by DAVID J. MITCHELL and BARNET LIBERMAN.

46. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC received its equity interests in the asset protection entities gratuitously, or for wholly inadequate consideration.

47. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC is the nominal holder of the alleged interests, in the entity defendants, and takes its direction from DAVID J. MITCHELL and BARNET LIBERMAN, in managing and operation in the asset protection entities, which exist merely to help Entity Defendants, DAVID J. MITCHELL and BARNET LIBERMAN protect the original assets of LAS VEGAS LAND PARTNERS, LLC from creditors such as Plaintiffs.

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2 48. Plaintiff is informed and believes, that the Entity Defendants are the recipients of
3 fraudulent transfers of real property, monies, and other valuable assets as hereinafter alleged.

4 49. Nype obtained a judgment against LVLP on or about April 10, 2015, and initiated
5 post-judgment collection and discovery efforts during the Summer of 2015.

6 50 The first post-judgment discovery documentation received by NYPE were various
7 tax returns and limited related information for LVLP, subsequently followed by various bank
8 statements and financial ledger documentation, spanning approximately late August, 2015 through
9 and including November 2015.
10

11 51. Most of the documentation so produced was already stale dated even when
12 produced, for example, the bank statements only being current through early 2014, SAID
13 documentation being produced in late 2015.
14

15 52. While the documentation produced in the latter half of 2015 disclosed some
16 suspicious circumstances and questionable transactions, it became clear that substantial additional
17 source document would be required to flesh out and understand precisely what had occurred.

18 53. Based on a preliminary review of the newly disclosed bank statements and ledgers,
19 it was noted that there was a comingling of funds related to various payments that appear to be
20 made on behalf of other entities. Although not all of the canceled checks were provided, the bank
21 statements of Las Vegas Land Partners, LLC located at Bates LVLP01-00001 to LVLP 08-00016
22 are indicative of usage by numerous related party entities. An example of the comingling can be
23 found at LVLP 07-00047, more specifically checks number 1287, 1288 and 1289 payable to the
24 Clark County Treasurer for parcels that do not appear to be recorded in the name of Las Vegas
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2 Land Partners, LLC and LVLP07-00048 more specifically checks number 1292 and 1293 payable
3 to Delaware Secretary of State to register other entities.

4 54. Documents provided labeled lvlp3a, a Las Vegas Land Partners, LLC document
5 consisting of a simple check register covering the period 1/13/11 to 4/27/15 also supports that
6 conclusion with the same date, payee and dollar amount information found on the checks.
7

8 58. A review of the full tax returns of LVLP Holdings, LLC provided at Bates
9 LVLP09-00001 to LVLP17-0064 Forms 1065 for calendar years 2005 to 2013 was first possible
10 in the late fall of 2015 as well. The tax returns are indicative of a combination and consolidation
11 of several related party Limited Liability Companies. The organizational documents located at
12 Bates LVLP18-00001 to LVLP19-00202 indicate that Las Vegas Land Partners, LLC is the single
13 equity member of Wink One, LLC and Livework Manager, LLC (who is the sole equity member
14 of Livework, LLC).

15 56. The members of Las Vegas Land Partners, LLC are Barnet Liberman and David
16 Mitchell (Bates LVLP19-00033-35).

17 57. There is no explanation for the usage of "LVLP Holdings, LLC" as the filing entity
18 for the tax returns. There are numerous real estate parcels, equity interests and sources of income
19 arising from the various consolidated entities listed on the tax returns of LVLP Holdings, LLC
20 that are not traceable to the ledgers provided by Las Vegas Land Partners, LLC.

21 58. Additionally there are numerous known sources of cash flow for example arising
22 from Wink One, LLC related to the RTC Lease that are not traceable to the accounting records.

23 59. During the Summer of 2016, NYPE again promulgated detailed specific written
24 discovery requests to LVLP, which requests were partially complied with in the form of additional
25 tax returns and ledger documentation, but mostly objected to.
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2 60. NYPE found it necessary to file a Motion to Compel discovery, and an Order
3 resulting from many months of contested discovery disputes was finally entered by the Court on
4 or about February 2, 2017.

5 61. Some additional documentation was ultimately produced, after repeated efforts by
6 NYPE, which disclosed additional improprieties, misconduct, and transactions by LVLP and its
7 principals designed to effectively render LVLP insolvent and unable to respond in damages,
8 which transactions will be discussed, in part, hereinafter.

9 62. The Order Compelling Discovery of February 2, 2017 has only been partially
10 complied with, and there remain substantial deficiencies and blocks of documentation that could
11 and should have been produced, but have not been, at least as of the date of LVLP's bankruptcy
12 filing.

13 64. Even the documents produced from January through March, 2017, are inherently
14 contradictory and do not match the data reported on the tax returns.

15 64. As one key example, however, of the importance of having accurate and complete
16 source records, attached hereto as Exhibit "1" and by this reference incorporated herein is a
17 certification by LVLP's New Jersey CPA for the first time disclosing that various affiliated and
18 associated entities are disregarded for tax and accounting purposes, and are all reported through
19 LVLP Holdings, LLC's business tax return.

20 65. The partial and incomplete documentation produced between the Fall of 2015, and
21 into 2017, did show extensive co-mingling, a failure to keep separate and adequate accounting
22 records for various affiliates and associated companies, a decided lack of concrete detail, and an
23 absolute failure to account for and explain various cash flow entries.

24 66. Given the incomplete documentation produced by defendants, the Plaintiff is
25 unable to determine where LVLP's cash flow is coming from, or where the resulting cash flow is
26 being applied.

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2 67. On information and belief, the documentation available shows that LVLP, its
3 affiliates and associated entities were shifting money between one entity and the other to pay bills
4 and cover expenses as needed, and not in any coherent or recurring logical form.

5 68. The data that has been provided does not match LVLP tax returns, for example
6 failing to disclose substantial income.

7 69. Part of the data provided appears to account for, in part, the financial transactions
8 and relationship between LVLP and its joint venture partner (the entity which Nype procured to
9 provide financing for LVLP's projects), Forest City Enterprises.

10 70. The data available to date appears to show that arrangements were made with
11 Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build equity,
12 resulting in an absence of actual cash receipt by LVLP.

13 71. Despite what those records are showing, however, the tax returns are wholly silent
14 and fail to disclose the accrual of any imputed income or equity with respect to the Forest City
15 Joint Ventures, despite the fact that the joint venture documents suggest that LVLP's share of
16 revenue is being used to pay down debt and build equity, which would legally result in the accrual
17 of taxable income which the law requires to be accurately reported

18 72. Indeed, until the preliminary information was received in the Fall of 2015 as
19 supplemented by the early 2017 production, LVLP, based on the tax returns and documentation it
20 had previously supplied, continued to operate, appeared to have assets, appeared to be paying
21 taxes as accrued, and continued to vigorously defend itself.

22 73. One particular item first disclosed in the late Winter of 2017 is a statement by the
23 acknowledged accountant for LVLP that numerous of the other defendant entities herein are
24 "disregarded for tax purposes", meaning, on information and belief, that their revenue and
25 expenses, as well as income and liabilities, while being nominally contained in a separate legal
26 entity, are a practical matter, and as recognized by Federal Taxing Authorities, one and the same
27 as LVLP. See Exhibit "1".
28

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2 74. Additional discovery information fleshed out in 2016 and early 2017 includes the
3 fact that LVLP has been effectively insolvent since 2015, despite showing millions of dollars of
4 network on its tax returns, and has been forced to pay its attorneys in both the prior litigation and
5 the present litigation through personal checks and credit cards of Mitchell and/or Liberman, or
6 through affiliate entities.

7 75. Much of the newly acquired financial data also disclosed that corporate filing fees
8 for numerous of the defendants herein had been paid, *ad hoc*, from LVLP bank accounts,
9 interchangeably, despite said entities nominally maintaining or claiming separate legal status.

10 76. Plaintiffs RUSSELL L. NYPE and the REVENUE PLUS, LLC (hereinafter
11 collectively referred to as "Nype") were Defendants in a case originally initiated by current
12 Defendants, LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC and ZOE
13 PROPERTIES, LLC in the Eighth Judicial District Court in Clark County, Nevada under Case
14 No. A551073, which case commenced on or about November 2, 2007 (hereinafter the "First
15 Case").

16 77 Nype counterclaimed in that case with regard to his prior business dealings with
17 LAS VEGAS LAND PARTNERS, LLC, its associate entities, and its principals, BARNET
18 LIBERMAN (hereinafter "Liberman") and DAVID J. MITCHELL (hereinafter "Mitchell"),
19 seeking compensation which he had been promised and which he had earned during the course of
20 the parties ongoing business dealings regarding the development of numerous Las Vegas real
21 estate holdings.

22 78. On information and belief, during the pendency of those proceedings, and after
23 defaulting on their obligations to Nype, Liberman and Mitchell undertook the process of creating
24 various affiliated and associate entities, including but not limited to several of the asset protection
25 entities as alleged in Paragraph 43 hereinabove, utilizing sophisticated corporate and asset
26 protection counsel.

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2 79. After years of protracted litigation, Nype ultimately obtained a judgment against
3 LAS VEGAS LAND PARTNERS, LLC on or about April 10, 2015 in the principal amount of
4 \$2,608,797.50.

5 80. As alleged hereinabove, upon information and belief, pursuant to the Asset
6 Protection Scheme, on various dates spanning 2007 through the present, Defendant LAS
7 VEGAS LAND PARTNERS, LLC commenced multiple real property and equity ownership
8 transfers to convey its valuable real property interests, to one or more the asset protection entities,
9 which asset protection entities continue to hold the subject real property or which have
10 subsequently transferred such to additional entities in which Liberman, Mitchell, and or LVLP
11 hold substantial beneficial interests.

12 81. In addition to the numerous real property conveyances alleged hereinabove, and
13 totally unbeknownst to Nype at the time LAS VEGAS LAND PARTNERS, LLC transferred
14 literally millions of dollars in monies and liquidated funds to its principals, LIBERMAN and
15 MITCHELL, during a time that LAS VEGAS LAND PARTNERS, LLC, knew or reasonably
16 should have known of Nype's substantial monetary claims against it.

17 82. The real estate and monetary transfers alleged hereinabove effectively rendered
18 LAS VEGAS LAND PARTNERS insolvent, and unable to pay its debts on a regular basis as they
19 matured, including but not limited to the monies that the Eighth Judicial District Court has
20 determined are owed to Nype.

21 83. Upon information and belief, the aforesaid actions of all Defendants were
22 undertaken consciously, knowingly, willfully, and specifically in an effort to defeat and avoid
23 Plaintiffs' rights which were being pursued in the First Case.

24 84. Upon information and belief, the Trustee is informed and believes and thereon
25 alleges that at all times herein mentioned Defendants, **LIBERMAN AND MITCHELL** were and
26 are the alter ego of LAS VEGAS LAND PARTNERS, LLC, that said Defendant did and still does
27 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
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2 still exists a unity of ownership between them; that the individuality and separateness of each
3 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
4 framework which LAS VEGAS LAND PARTNERS, LLC used and still use to conduct their
5 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
6 and fraud upon the Trustee will result if the theoretical separateness of LAS VEGAS LAND
7 PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being
8 sought herein.

9 85. Upon information and belief, the Trustee is informed and believes and thereon
10 alleges that at all times herein mentioned Defendants, **MEYER PROPERTY, LLC** was and is
11 the alter ego of MEYER PROPERTY, LLC, that said Defendants did and still do dominate,
12 influence and control of MEYER PROPERTY, LLC, that there existed and still exists a unity of
13 ownership between them; that the individuality and separateness of each entity was and remains
14 non-existent; that each such entity was and remains a mere shell and naked framework which LAS
15 VEGAS LAND PARTNERS, LLC, MITCHELL and LIBERMAN used and still use to conduct
16 their business affairs; that each such entity is and remains inadequately capitalized; and that an
17 injustice and fraud upon the Trustee will result if the theoretical separateness of MEYER
18 PROPERTY, LLC entity is not disregarded and the said Defendant held liable for all relief being
19 sought herein.

20 86. Upon information and belief, the Trustee is informed and believes and thereon
21 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC,**
22 **LIBERMAN and MITCHELL** were and are the alter ego of ZOE PROPERTY, LLC, that said
23 Defendants did and still do dominate, influence and control of **ZOE PROPERTY, LLC**, that
24 there existed and still exists a unity of ownership between them; that the individuality and
25 separateness of each entity was and remains non-existent; that each such entity was and remains a
26 mere shell and naked framework which LAS VEGAS LAND PARTNERS, LLC, MITCHELL and
27 LIBERMAN used and still use to conduct their business affairs; that each such entity is and
28

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2 remains inadequately capitalized; and that an injustice and fraud upon the Trustee will result if the
3 theoretical separateness of **ZOE PROPERTY, LLC** entity is not disregarded and the said
4 Defendant held liable for all relief being sought herein.

5 87. Upon information and belief, the Trustee is informed and believes and thereon
6 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
7 **LIBERMAN and MITCHELL** were and are the alter ego of **LEAH PROPERTY, LLC**, that
8 said Defendants did and still do dominate, influence and control of **LEAH PROPERTY, LLC**, that
9 there existed and still exists a unity of ownership between them; that the individuality and
10 separateness of each entity was and remains non-existent; that each such entity was and remains a
11 mere shell and naked framework which **LAS VEGAS LAND PARTNERS, LLC**, **MITCHELL** and
12 **LIBERMAN** use and still use to conduct their business affairs; that each such entity is and
13 remains inadequately capitalized; and that an injustice and fraud upon the Trustee will result if the
14 theoretical separateness of **LEAH PROPERTY, LLC**, if entity is not disregarded and the said
15 Defendant held liable for all relief being sought herein.

16 88. Upon information and belief, the Trustee is informed and believes and thereon
17 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
18 were and are the alter ego of **WINK ONE, LLC**, that said Defendant did and still does dominate,
19 influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists
20 a unity of ownership between them; that the individuality and separateness of each entity was and
21 remains non-existent; that each such entity was and remains a mere shell and naked framework
22 which **WINK ONE, LLC** used and still use to conduct their business affairs; that each such entity
23 is and remains inadequately capitalized; and that an injustice and fraud upon the Trustee will
24 result if the theoretical separateness of **WINK ONE, LLC** if entity is not disregarded and the said
25 Defendant held liable for all relief being sought herein

26 89. Upon information and belief, the Trustee is informed and believes and thereon
27 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
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2 were and are the alter ego of **LIVE WORK, LLC**, that said Defendant did and still does
3 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
4 still exists a unity of ownership between them; that the individuality and separateness of each
5 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
6 framework which **LIVE WORK, LLC** used and still use to conduct their business affairs; that
7 each such entity is and remains inadequately capitalized; and that an injustice and fraud upon the
8 Trustee will result if the theoretical separateness of **LIVE WORK, LLC** if entity if entity is not
9 disregarded and the said Defendant held liable for all relief being sought herein.

10 90. Upon information and belief, the Trustee is informed and believes and thereon
11 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
12 were and are the alter ego of **LIVE WORK MANAGER, LLC**, that said Defendant did and still
13 does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there
14 existed and still exists a unity of ownership between them; that the individuality and separateness
15 of each entity was and remains non-existent; that each such entity was and remains a mere shell
16 and naked framework which **LIVE WORK MANAGER, LLC** used and still use to conduct their
17 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
18 and fraud upon the Trustee will result if the theoretical separateness of **LIVE WORK**
19 **MANAGER, LLC** entity is not disregarded and the said Defendant held liable for all relief being
20 sought herein.

21 91. Upon information and belief, the Trustee is informed and believes and thereon
22 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
23 was and are the alter ego of **AQUARIUS OWNER, LLC**, that said Defendant did and still does
24 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
25 still exists a unity of ownership between them; that the individuality and separateness of each
26 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
27 framework which **AQUARIUS OWNER, LLC** used and still use to conduct their business
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2 affairs; that each such entity remains inadequately capitalized; and that an injustice and fraud upon
3 the Trustee will result if the theoretical separateness of **AQUARIUS OWNER, LLC** entity is not
4 disregarded and the said Defendant held liable for all relief being sought herein.

5 92. Upon information and belief, the Trustee is informed and believes and thereon
6 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
7 were and are the alter ego of **LVLV HOLDINGS, LLC**, that said Defendant did and still does
8 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
9 still exists a unity of ownership between them; that the individuality and separateness of each
10 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
11 framework which **LVLV HOLDINGS, LLC** used and still use to conduct their business affairs;
12 that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon
13 the Trustee will result if the theoretical separateness of **LVLV HOLDINGS, LLC** entity is not
14 disregarded and the said Defendant held liable for all relief being sought herein.

15 93. Upon information and belief, the Trustee is informed and believes and thereon
16 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
17 were and are the alter ego of **MITCHELL HOLDINGS, LLC**, that said Defendant did and still
18 does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there
19 existed and still exists a unity of ownership between them; that the individuality and separateness
20 of each entity was and remains non-existent; that each such entity was and remains a mere shell
21 and naked framework which **MITCHELL HOLDINGS, LLC** used and still use to conduct their
22 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
23 and fraud upon the Trustee will result if the theoretical separateness **MITCHELL HOLDINGS,**
24 **LLC** entity is not disregarded and the said Defendant held liable for all relief being sought herein.

25 94. Upon information and belief, the Trustee is informed and believes and thereon
26 alleges that at all times herein mentioned, **LAS VEGAS LAND PARTNERS, LLC**, is and was the
27 alter ego of **305 LAS VEGAS, LLC**, that **LVLV** did and still does dominate, influence and
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2 control of 305 Las Vegas, LLC, that there existed and still exists a unity of ownership between
3 them; that the individuality and separateness of each entity was and remains non-existent; LVLP
4 was and remains a mere shell and naked framework **which 305 LAS VEGAS, LLC**, used and
5 still use to conduct their business affairs; that an injustice and fraud upon the Trustee will result if
6 the theoretical separateness of LAS VEGAS LAND PARTNERS, LLC entity is not disregarded
7 and the said Defendant held liable for all relief being sought herein.

8 95. Upon information and belief, the Trustee is informed and believes and thereon
9 alleges that at all times herein mentioned Defendants, LAS VEGAS LAND PARTNERS, LLC,
10 was and are the alter ego of **LIVE WORKS TIC SUCCESSOR, LLC**, that said Defendant did
11 and still does dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that
12 there existed and still exists a unity of ownership between them; that the individuality and
13 separateness of each entity was and remains non-existent; that each such entity was and remains a
14 mere shell and naked framework which **LIVE WORKS TIC SUCCESSOR, LLC** used and still
15 use to conduct their business affairs; that each such entity is and remains inadequately capitalized;
16 and that an injustice and fraud upon the Trustee will result if the theoretical separateness of LAS
17 VEGAS LAND PARTNERS, LLC entity is not disregarded and the said Defendant held liable for
18 all relief being sought herein.

19 96. Upon information and belief, the Trustee is informed and believes and thereon
20 alleges that at all times herein mentioned Defendants, LAS VEGAS LAND PARTNERS, LLC,
21 were and are the alter ego of **FC/LV VEGAS, LLC**, that said Defendant did and still does
22 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
23 still exists a unity of ownership between them; that the individuality and separateness of each
24 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
25 framework which **FC/LV VEGAS, LLC** used and still use to conduct their business affairs; that
26 each such entity is and remains inadequately capitalized; and that an injustice and fraud upon the
27 Trustee will result if the theoretical separateness of LAS VEGAS LAND PARTNERS, LLC entity
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1 is not disregarded and the said Defendant held liable for all relief being sought herein.

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3 97. Upon information and belief, the Trustee is informed and believes and thereon
4 alleges that at all times herein mentioned Defendants, LAS VEGAS LAND PARTNERS, LLC,
5 were and are the alter ego of **CASINO COOLIDGE, LLC**, that said Defendant did and still does
6 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
7 still exists a unity of ownership between them; that the individuality and separateness of each
8 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
9 framework which **CASINO COOLIDGE, LLC** used and still use to conduct their business
10 affairs; that each such entity is and remains inadequately capitalized; and that an injustice and
11 fraud upon the Trustee will result if the theoretical separateness of LAS VEGAS LAND
12 PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being
13 sought herein.

14 98. This New Case is effectively an extension and development of the first litigation,
15 and is an effort by the Trustee to avoid the wrongful misconduct of Defendants and each of them,
16 in attempting to avoid LVLP's creditor's rights and improperly dissipate the assets of LAS
17 VEGAS LAND PARTNERS, LLC, which were, are, and should be available to satisfy various
18 creditor claims.

19 **FIRST CLAIM FOR RELIEF**

20 **(Constructive Trust)**

21 99. The Trustee incorporates by reference paragraphs 1 through 98 as though fully
22 set forth.

23 100. Pursuant to the pending litigation in the First Case, it was understood that options
24 or equity in various Real Estate parcels owned by LAS VEGAS LAND PARTNERS, LLC in or
25 about 2006, as well as "Choses In Action" such as equity ownership in various affiliated entities
26 would be available to satisfy Plaintiff's judgment.

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1
2 101. Defendants knew or reasonably should have known, that the subject property
3 interests were valuable, and that the legitimate equity in the subject real property or beneficial
4 ownership of the affiliate entities and limited liability ownership interest would be sufficient to
5 satisfy Nype's claim, but for the fraudulent conveyances alleged herein.

6 102. Defendants transferred, hypothecated and encumbered various real property for
7 improper purposes and inadequate consideration.

8 103. All of the foregoing facts make it just and equitable that this court impose and
9 declare a constructive trust upon the subject property interest, and any proceeds therefrom, in
10 favor of the Plaintiffs and the Trustee.

11 104. The court can and should declare a lien against the subject properties, order the
12 sale thereof, and/or order the payment of all rents or monies received from the subject property to
13 Plaintiffs and the Trustee herein.

14 105. It has been necessary for Trustee to retain the services of an attorney to prosecute
15 this action and Plaintiff is therefore entitled to an award of reasonable attorneys' fees

16 **SECOND CLAIM FOR RELIEF**

17 **(Fraudulent Conveyance)**

18 106. The Trustee incorporates by reference paragraphs 1 through 105 as though fully
19 set forth.

20 107. The Trustee is informed and believes, and on that basis alleges that Defendants
21 have taken numerous actions to avoid satisfying various creditor claims against LAS VEGAS
22 LAND PARTNERS, LLC.

23 108. The Trustee alleges on information and belief, that in order to avoid potential
24 execution against real estate interests, *inter alia*, LAS VEGAS LAND PARTNERS, LLC took
25 steps to hypothecate and transfer numerous property interests and valuable interests to the other
26 Defendants herein.

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1
2 109. The Trustee is informed and believes, and on that basis alleges that such transfers
3 by Defendants were undertaken in an effort to avoid the adverse financial consequences of
4 Plaintiffs' pending claims, as well as those of other creditors.

5 110. The Trustee is informed and believes, and on that basis alleges that the
6 aforementioned transfers were gratuitous, or for inadequate or disguised consideration, made
7 without obligation, and made with an intent to deprive Plaintiff's and other creditors of their
8 ability to recover such funds directly from LAS VEGAS LAND PARTNERS, LLC in connection
9 with the monies owed.

10 111. As a result of the aforementioned acts of Defendants, Plaintiffs and the Trustee are
11 entitled to a Judgment against Defendants, jointly and severally, in an amount in excess of
12 \$15,000.00.

13 112. On or about August 14, 2014, during the course of proceedings initiated to enforce
14 and collect upon the judgment in the First Case, Defendant LAS VEGAS LAND PARTNERS,
15 LLC first provided tax returns and detail financial information which revealed to Nype, for the
16 first time, that it had transferred its interest in numerous real estate parcels, as well as many
17 millions of dollars, to the entity defendants and/or Liberman and Mitchell, during the ongoing
18 pendency of the first case.

19 113. In making such transfers, LAS VEGAS LAND PARTNERS, LLC, and Defendants
20 MITCHELL and LIBERMAN have acted with the actual intent to hinder delay and to defraud
21 their creditors, including Nype, but fraudulently transferring assets to insiders and the entity
22 defendants.

23 114. The Trustee lacks an adequate remedy at law because, unless the relief sought in
24 this complaint is granted, LAS VEGAS LAND PARTNERS, LLC with the aid of the Defendants
25 herein will have succeeded in fraudulently transferring its assets to insiders and/or related entities,
26 depriving creditors of the opportunity to collect monies due and owing from LAS VEGAS LAND
27 PARTNERS, LLC.
28

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1
2 115. The Trustee has an high probability of success on the merits in this action.

3 116. The aforesaid transfer of assets to insiders and/or the entity defendants was made
4 with actual intent to hinder, delay or defraud creditors, most significantly Nype, and these
5 transfers therefore constitute fraudulent transfers in violation of NRS 112.180.

6 117. LAS VEGAS LAND PARTNERS, LLC did not receive reasonably equivalent
7 value for the transfers herein alleged.

8 118. LAS VEGAS LAND PARTNERS, LLC and its principals intended to incur or
9 reasonably should have believed they would incur debts beyond its ability to pay the same as they
10 become due, and thus the transfers at issue are transfers in violation of Nevada law.

11 119. Because of the special circumstances of this case, in which LAS VEGAS LAND
12 PARTNERS, LLC is liable for a judgment it has consistently ignored and avoided, having
13 committed fraud to avoid the judgment and its debts, and the hiding assets, and also constituting a
14 risk of further affirmative frustration of valid efforts by Nype and other creditors to collect upon
15 their claims, the Trustee is entitled to:

- 16 (1) The appointment of receiver to take possession of the assets of
17 LVLP, LLC;
- 18 (2) An injunction against further dissipation, disposition, or assignment
19 of any and all assets and property owned by LAS VEGAS LAND
20 PARTNERS, LLC;
- 21 (3) Any other relief that the circumstances may require, including a
22 declaration that the transfers in question are void, and that the assets
23 in question are subject to execution by Nype.

24 120. It has been necessary for Trustee to retain the services of an attorney to prosecute
25 this action, and Trustee is, therefore, entitled to reasonable attorneys' fees.

26
27
28

THIRD CLAIM FOR RELIEF

(Civil Conspiracy)

121. The Trustee incorporates by reference paragraphs 1 through 120 as though fully set forth.

122 As alleged hereinabove, and upon information and belief, the transfer of the subject real estate and substantial monetary amounts were undertaken by Defendants with full knowledge as to the relevant circumstances and in an effort to participate in transactions in derogation of the rights of creditors.

123. The knowing and willful conduct of the entity Defendants in agreeing to receive the subject real property and act as a nominee for said LAS VEGAS LAND PARTNERS. LLC, LIBERMAN and MITCHELL constitute acts of civil conspiracy.

124. The Defendants, and each of them worked together in concerted actions with the intent to accomplish an unlawful purpose, vis a vis Plaintiffs and other creditors.

125. The purpose of the unlawful, concerted actions of Defendants was intended to, or would likely result in direct harm to the creditors of LVLP.

126. As a direct and proximate result of the aforesaid civil conspiracy, undertaken between the Defendants, Plaintiffs and the Trustee have been damaged in an amount in excess of \$15,000.00.

127. As alleged hereinabove, upon information and belief, Defendants' conduct was willful, knowing, intentional, and malicious, as a matter of law, entitling Plaintiffs and the Trustee to recover exemplary damages in an amount in excess of \$15,000.00.

128. That it has been necessary for the Trustee to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to reasonable attorneys' fees.

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FOURTH CLAIM FOR RELIEF

(Declaratory Relief)

129. The Trustee incorporates by references Paragraphs 1 through 128 as though fully set forth herein.

130. A true and ripe controversy exists as to the dispute, and declaratory relief pursuant to NRS 30.040 is necessary to declare the respective rights, responsibilities, and obligations between the parties as a consequence of Plaintiffs' judgment against LAS VEGAS LAND PARTNERS, LLC, and as relates to the various transactions undertaken by Defendants, including but not limited to transactions involving various parcels of valuable Las Vegas Real Estate.

131. For all of the reasons set forth hereinabove, Defendants have acted wrongfully and in violation of its creditors', and a direct declaration as to the invalidity of Defendants' transfers, and such should be determined and declared by the court.

132. That it has been necessary for the Trustee to retain the services of an attorney to prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

FIFTH CLAIM FOR RELIEF

(Alter Ego)

133. Plaintiff incorporates by references Paragraphs 1 through 132 as though fully set forth herein.

134. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIAS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LV VEGAS, LLC, CASINO COOLIDGE, LLC, and each of them, were and remain the alter-egos of each other; that said Defendants did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and

1
2 separateness of each entity was and remains non-existent; that each such entity was and remains a
3 mere shell and naked framework which the other Defendants used and still use to conduct their
4 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
5 and fraud upon creditors will result if the theoretical separateness of the Defendant entities is not
6 disregarded and each such Defendant held liable for all relief being sought herein.

7 135. Upon information and belief, to the extent that one or more of the Defendant
8 entities is nominally owned or operated by or through LAS VEGAS LAND PARTNERS, LLC, or
9 Defendants LIBERMAN or MITCHELL with respect to one or more of the Defendant entities, which
10 entities as a practical matter exist with functional unity of ownership in said LAS VEGAS LAND
11 PARTNERS, LLC or Defendants LIBERMAN or MITCHELL, the true and factual individuality and
12 separateness of each such entity was and remains non-existent; each such entity was and remains a
13 mere shell and naked framework, which LAS VEGAS LAND PARTNERS, LLC and Defendants
14 LIBERMAN or MITCHELL utilize, through the offices of said Defendants LAS VEGAS LAND
15 PARTNERS, LLC, LIBERMAN or MITCHELL and/or through nominees and others to conduct their
16 business affairs. Each such entity is, upon information and belief, merely another nominal
17 manifestation of the business and financial affairs of LAS VEGAS LAND PARTNERS, LLC and
18 the Defendants LIBERMAN or MITCHELL, and to recognize any such separate entity would work
19 as separate and distinct from LAS VEGAS LAND PARTNERS, LLC and Defendants LIBERMAN
20 or MITCHELL, an injustice and fraud upon creditors, to the extent the theoretical or putative
21 separateness of such entity is not disregarded and said nominal Defendants held liable for all the relief
22 being sought herein.

23 136. As a matter of both statutory common law, and prior declarations of the Eighth
24 Judicial District Court, it is appropriate that the Court further determine and declare that all of the
25 aforesaid entities be held to be the Alter Egos of LAS VEGAS LAND PARTNERS, LLC and of
26 Defendants LIBERMAN or MITCHELL, and that therefore the various Defendants named herein can
27
28

1
2 and should be jointly and severely liable to the Plaintiffs and Trustee with regard to all claims
3 asserted.

4 137. That it has been necessary for the Trustee to retain the services of an attorney to
5 prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

6 **WHEREFORE**, Plaintiff prays for judgment against Defendants and each of them
7 as follows:

- 8 1. For a sum in excess of \$15,000.00;
- 9 2. For exemplary damages in an amount in excess of \$10,000.00;
- 10 3. For the imposition of a constructive trust upon the various parcels of real property and
11 valuable equity ownership interests formerly owned by LAS VEGAS LAND
12 PARTNERS, LLC for the benefit of Plaintiff;
- 13 4. For an order requiring the sale of the parcels of real estate and valuable ownership
14 interest and an order directing the payment of all rents with regard to the subject real
15 property be made to the order of the Trustee herein;
- 16 5. For the Appointment of a Receiver;
- 17 6. For interest upon all damages which Plaintiffs and the Trustee recovers at the Nevada
18 Statutory rate.
- 19 7. For a declaration as to the invalidity of Defendants' transactions as regards to the
20 various valuable real estate interests and equity ownership interests formerly owned
21 by LAS VEGAS LAND PARTNERS, LLC;
- 22 8. For a determination that the Defendants are the alter egos of each other , and should
23 all be held liable to Plaintiff, jointly and severally, for the damages sought herein.
- 24 9. For a declaration that the actions by LAS VEGAS LAND PARTNERS, LLC, in
25 conjunction with the Defendants herein, to convey valuable property and monies to
26 other Defendants with the intent to deprive creditors of their ability to recover funds
27 was undertaking in a knowing, willful, intentional, and malicious manner, which
28

under Nevada law constitute malice and is sufficient grounds to invoke the availability of exemplary damages against Defendants, and each of them.

10. As a consequence of the willful malicious and intentional misconduct of the Defendants and each of them, Plaintiffs and the Trustee are entitled to recover exemplary damages from each Defendant in accordance with Nevada Law, in an amount in excess of \$15,000.00, the precise amount to be proven at time of trial.

11. For reasonable attorneys' fees for the prosecution of this suit; and

12. For such other and further relief as the Court may deem just and proper.

DATED this 18th day of November, 2019.

JOHN W. MUIJE & ASSOCIATES

By: 

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CERTIFICATE OF MAILING

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 18th day of November, 2019, I caused the foregoing document, **COMPLAINT IN INTERVENTION (1) CONSTRUCTIVE TRUST; (2) FRAUDULENT CONVEYANCE; (3) CONSPIRACY TO DEFRAUD; (4) DECLARATORY RELIEF; AND (5) ALTER EGO**, to be served as follows:

- ☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid addressed as follows; and/or
- ☒ By electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;
- ☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid marked certified return receipt requested addressed as follows:

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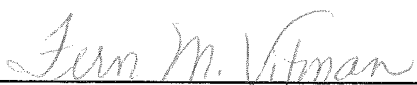

An Employee of John W. Muije & Associates

EXHIBIT D

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Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC,
DOES I through X; DOES I through X; DOE
CORPORATIONS CASE NO: A-16-740689-
C I through X; and DOES PARTNERSHIPS I
through X,

Plaintiffs,

v.

DAVID J. MITCHELL; BARNET
LIBERMAN; LAS VEGAS LAND
PARTNERS, LLC; MEYER PROPERTY,
LTD.; ZOE PROPERTY, LLC; LEAH
PROPERTY, LLC; WINK ONE, LLC; LNE
WORK, LLC; LNE WORK MANAGER,
LLC; AQUARIUS OWNER, LLC; L VLP
HOLDINGS, LLC; MITCHELL HOLDINGS,
LLC; LIBERMAN HOLDINGS, LLC; 305
LAS VEGAS, LLC; LIVE WORKS TIC
SUCCESSOR, LLC; CASINO COOLIDGE
LLC; DOES I through ill, and ROE
CORPORATIONS I through ill, inclusive,

Defendants.

Case No.: A-16-740689-C

Dept.: XI

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez beginning on December 30, 2019, and continuing day to day, until its completion on January 7, 2020; John W. Muije of John W. Muije & Associates appeared on behalf of Russell L. Nype and Revenue Plus, LLC ("Plaintiffs") and Shelley D. Krohn, U.S. Bankruptcy Trustee ("Plaintiff Trustee"); H. Stan Johnson, James L. Edwards and Kevin M. Johnson of the law firm of Cohen, Johnson, Parker & Edwards appeared on behalf of David J. Mitchell, Las Vegas Land Partners, LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, Mitchell Holdings

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CLERK OF THE COURT

14

1 LLC, Live Works TIC Successor LLC, FC/Live Work Vegas LLC, ("Mitchell Defendants");¹
2 Brian W. Boschee of the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson
3 appeared on behalf of Defendant 305 Las Vegas, LLC²; and, Elliott S. Blut appeared on behalf of
4 Defendants Barnett Liberman and Casino Coolidge; the Court having read and considered the
5 pleadings filed by the parties; having reviewed the evidence admitted during the trial; having
6 heard and carefully considered the testimony of the witnesses called to testify and weighing their
7 credibility; having considered the oral and written arguments of counsel, and with the intent of
8 rendering a decision on all claims before the Court,³ pursuant to NRCP 52(a) and 58; the Court
9 makes the following findings of fact and conclusions of law:

11 FINDINGS OF FACT

12
13 1. This action arises from a judgment that Plaintiffs obtained on or about April 10,
14 2015, against Las Vegas Land Partners, LLC ("LVLP") in Case No. A551073. Plaintiff filed this
15 suit on July 26, 2016. The complaint was amended by the filing of an amended complaint on
16 August 21, 2017.

17 2. Plaintiff Trustee was duly appointed to act as the Trustee in the Bankruptcy Case
18 of *Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn and moved to intervene in the
19 instant action, which motion was granted on November 18, 2019. Plaintiff Trustee filed the
20 complaint in intervention on November 18, 2019.

21 3. Plaintiff Russell L. Nype ("Nype") is an adult resident of New York.

22
23
24 ¹ Given the filing of *Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn in
August 2019, the Court takes no action against Las Vegas Land Partners, LLC.

25 ² The Court granted the Rule 50(a) motion by 305 Las Vegas, LLC at the close of the
26 Plaintiffs' case as no damages against that entity were established given the nature of its conduct.

27 ³ Plaintiff asserted five claims for relief against the Defendants: 1) Constructive Trust;
28 2) Fraudulent Transfer; 3) Civil Conspiracy; 4) Declaratory Relief; and 5) Alter Ego.

1 4. Plaintiff Revenue Plus, LLC (collectively with Nype, "Plaintiffs") is a Florida
2 limited liability company.

3 5. Defendant, David J. Mitchell ("Mitchell"), is an adult resident of New York.

4 6. Defendant, Barnett Liberman ("Liberman"), is an adult resident of New York.

5 7. Defendant Mitchell Holdings, LLC ("Mitchell Holdings") is a Delaware limited
6 liability company.

7 8. Defendant LVLP Holdings, LLC ("LVLP Holdings") is a Delaware limited
8 liability company that was formed on or about November 4, 2004 by Mitchell and Liberman.

9 9. Defendant Las Vegas Land Partners ("LVLP") is a Delaware limited liability
10 company.

11 10. Mitchell and Liberman are managers of LVLP.

12 11. At all relevant times, Mitchell and Liberman were the sole owners (50/50) and
13 managers of LVLP Holdings.

14 12. At all relevant times, LVLP was owned (50/50) and managed by Mitchell and
15 Liberman.

16 13. Defendant Casino Coolidge LLC is a Nevada limited liability company. ("Casino
17 Coolidge").

18 14. Liberman is the managing member of Casino Coolidge.

19 15. Defendant Aquarius Owner, LLC ("Aquarius") is a Delaware limited liability
20 company.

21 16. Defendant Leah Property, LLC ("Leah") is a Delaware limited liability company.

22 17. Defendant Livework, LLC ("Livework") is a Delaware limited liability company.

23 18. Defendant Livework Manager, LLC ("Livework Manager"), is a Delaware limited
24 liability company.

25 19. Defendant Zoe Property, LLC ("Zoe") is a Delaware limited liability company.

26 20. Defendant Wink One, LLC ("Wink") is a Delaware limited liability company.

1 21. Defendant Meyer Property, LLC ("Meyer") is a Delaware limited liability
2 company.

3 22. Non-party Charleston Casino Partners, LLC ("Casino Partners") is a Delaware
4 limited liability company.

5 23. Defendant FC/LW Vegas, LLC ("FC/LW") is a Delaware limited liability
6 company.

7 24. Defendant LiveWorks TIC Successor, LLC ("TIC Successor") is a Delaware
8 limited liability company.

9 25. These entities are collectively referred to as the Related Entities.⁴

10 26. 305 Las Vegas, LLC ("305 Las Vegas") was created in April of 2007 for the
11 purpose through a 1031 exchange of purchasing real property located around 300 East
12 Charleston.

13 27. In 2005, Mitchell and Liberman requested Nype's assistance with finding a
14 development partner to assist them in developing certain real property in Downtown Las Vegas.

15 28. Prior to closing the transaction with Forest City, a dispute arose between LVLP
16 and Nype in late 2006/early 2007 over the amount Nype was entitled to be paid related to the
17 transaction with Forest City.

18 29. Mitchell and Liberman were fully aware that Nype was expecting to receive at
19 least two million dollars for his efforts.

20 30. Despite understanding Nype's expectations, Mitchell and Liberman only set aside
21 \$430,000.

22 31. Shortly after setting aside that amount, Mitchell and Liberman took personal
23 distributions from LVLP in excess of thirteen million dollars.
24

25
26 ⁴ For purposes of the term "Related Entity" the following are included: Las Vegas Land
27 Partners, LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC,
28 LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC,
LiveWorks TIC Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC.

1 32. On November 2, 2007, LVLP and two other entities⁵ sued Nype seeking primarily
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking
3 compensation for services rendered.

4 33. In December 2014, Leah sold certain real property to Casino Coolidge for
5 \$1,000,000. Mitchell and Liberman caused Leah to distribute sales proceeds in the amount of
6 \$341,934.47 directly to themselves, rather than Leah's parent company, LVLP. Plaintiff has not
7 established that given the market conditions at the time that Mitchell and Liberman sold the Leah
8 Property without obtaining reasonably equivalent value in exchange.

9 34. After obtaining judgment on the counterclaim in 2015, Nype engaged in
10 significant attempts to collect on the Judgment from LVLP.

11 35. Those efforts resulted in recovery of approximately \$10,000.

12 36. Between 2007 and 2016, Mitchell and Liberman distributed to themselves a total
13 of \$15,148,339 from the Related Entities.

14 37. These distributions were at times that Mitchell and Liberman were fully aware of
15 Nype's claims.

16 38. The distributions caused and/or contributed to the Related Entities' insolvency
17 and/or inability to pay their debts as they became due.

18 39. The evidence also demonstrates that Mitchell, Liberman and the Related Entities
19 engaged in conscious, concerted and ongoing efforts to conceal, hide, convey, keep secret and/or
20 divert millions of dollars in assets away from Nype and/or other creditors.

21 40. The evidence also demonstrates that Mitchell, Liberman and the Related Entities
22 engaged in conscious, concerted and ongoing efforts to ensure that funds and/or assets that would
23 otherwise be available to Nype to satisfy his claims (and Judgment) were kept away from Nype.

24
25
26
27 ⁵ The other plaintiffs in that case were LiveWork LLC and Zoe Properties, LLC, neither of
28 which were named as counterdefendants.

1 41. The evidence demonstrates that Mitchell, Liberman and the Related Entities
2 distributed in excess of \$15,000,000 in funds that should have been available to satisfy Nype's
3 claims/Judgment.

4 42. Nype's disclosure of the tax returns and its own consultant's report⁶ on or about
5 April 25, 2014, in A551073, are the latest date of discovery for purposes of NRS 112.230(1)(a).⁷
6

7 43. David Mitchell was not credible.⁸ The failure of Mitchell to meaningfully
8 participate in discovery until the eve of trial and the failure to produce documents which should
9 have been in his possession leads the Court to conclude that if those documents had been
10 produced they would have been adverse to Mitchell.

11 44. At all relevant times, each of the Related Entities was wholly owned and managed
12 by LVLP or LVLP Holdings.

13 45. At all relevant times, each of the Related Entities was beneficially owned,
14 controlled, and managed by Mitchell and Liberman.
15

16 46. One or more of the Related Entities was formed with an initial capitalization of
17 just \$10.
18
19

20 ⁶ The report is a part of Exhibit 90079.

21 ⁷ That statute provides in pertinent part:
22

23 1. A claim for relief with respect to a fraudulent transfer or obligation under this chapter is
24 extinguished unless action is brought:

25 (a) Under paragraph (a) of subsection 1 of NRS 112.180, within 4 years after the transfer was
26 made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was
27 or could reasonably have been discovered by the claimant;

28 ⁸ The explanation by Mitchell surrounding the creation of retention agreements with the
CPA Sam Spitz signed in different styles and ink is additional information which leads the Court
to believe Mitchell is not credible. (Exhibits 60032-60036).

1 47. At all relevant times, each of the Related Entities was treated by Mitchell and
2 Liberman as a disregarded entity of LVLP Holdings for tax purposes and all of the Related
3 Entities filed one combined tax return.

4 48. Except with respect to Livework Manager and Casino Coolidge, none of these
5 entities had its own bank account. Mitchell caused each of the Related Entities to use the same
6 bank accounts to deposit and disburse funds, including distributions to Mitchell and Liberman.

7 49. At all relevant times, Mitchell and Liberman caused each of the Related Entities to
8 use the same financial and accounting records, which are not distinguishable by entity. Each of
9 the Related Entities' financial and accounting records are not distinguishable by entity.

10 50. The LVLP accounting records include a few Mitchell and Liberman personal
11 transactions and postings commingled from multiple entities.

12 51. Mitchell and Liberman caused each of the Related Entities to use the same general
13 ledger to post all entries under the name of "Las Vegas Land Partners".

14 52. Mitchell, Liberman and the Related Entities commingled funds, including personal
15 loans from various banks which are included in the LVLP accounting records and general ledger.

16 53. Mitchell and Liberman also used journal entries to post commingled transactions
17 for themselves and the Related Entities.

18 54. In 2016, the Related Entities stopped using bank accounts and instead began using
19 journal entries to post entries apparently transacted personally by Mitchell.

20 55. As a result of Mitchell and Liberman's domination, influence and control over the
21 Related Entities, the individuality and separateness of the Related Entities—vis-à-vis themselves
22 and Mitchell and Liberman—was and remains nonexistent as evidenced by the commingling of
23 funds, transactions, revenues, expenses, assets, liabilities and contributed capital.

24 56. The manner in which Mitchell and Liberman operated the Related Entities makes
25 it virtually impossible to identify transactions by purpose and/or entity.

26 57. The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities
27 commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;
28

1 (c) Mitchell, Liberman and the Related Entities distributed funds to Mitchell and Liberman as
2 individuals without regard to parent entities; (d) Mitchell, Liberman and the Related Entities
3 treated assets of the other entities as their own; and (e) the Related Entities failed to observe
4 corporate or LLC formalities.

5 58. The evidence demonstrates that the Related Entities: (a) are and were influenced
6 and governed by Mitchell and Liberman; (b) there is such unity of interest and/or ownership that
7 Mitchell, Liberman and the Related Entities are inseparable from the other; and (c) the facts are
8 such that adherence to the fiction of separate entities would, under the circumstances, sanction a
9 fraud or promote injustice.

10 59. Mitchell, Liberman and the Related Entities have made distributions to avoid
11 satisfying Nype's claims and Judgment.

12 a. When Leah Property sold certain real property to Casino Coolidge on or
13 about December 17, 2014, and did not transfer the funds to LVLP;

14 b. When Mitchell and Liberman took personal distributions from the Related
15 Entities, between 2007 and 2016, totaling \$15,148.339.

16
17 60. In determining that these distributions were made with the actual intent to hinder,
18 delay or defraud creditors and Nype, the Court notes, among other things, the following:

19 a. They were made to "insiders" or other entities of which Mitchell and
20 Liberman own or control (in whole or in part);

21 b. They were made at times when Mitchell and Liberman were fully aware of
22 Nype's claims, Judgment and/or Nype's intent to sue for the amounts owed to him.

23 c. The distributions rendered or contributed to LVLP's and/or the Related
24 Entities' insolvency, and left LVLP and/or the Related Entities unable to pay their debts as they
25 became due;

1 d. Mitchell, Liberman and the Related Entities attempted to conceal the
2 distributions and their assets, through their discovery misconduct in this matter, which required
3 enormous and expensive effort on Nype's part to attempt to obtain full and proper disclosure; and

4 e. Mitchell, Liberman and the Related Entities removed or concealed assets.

5 61. If any findings of fact are properly conclusions of law, they shall be treated as if
6 appropriately identified and designated.
7

8 CONCLUSIONS OF LAW

9 1. In Nevada, there are three general requirements for application of the alter ego
10 doctrine: (1) the corporation must be influenced and governed by the person asserted to be the
11 alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the
12 other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity
13 would, under the circumstances, sanction fraud or promote injustice." *Polaris Indus. Corp. v.*
14 *Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987).
15

16 2. Nevada recognizes application of the alter ego doctrine in reverse, in which a
17 creditor is permitted to reach "the assets of a corporation to satisfy the debt of a corporate insider
18 based on a showing that the corporate entity is really the alter ego of the individual." *Loomis*,
19 116 Nev. at 903, 8 P.3d at 846.
20

21 3. Application of the alter ego doctrine in reverse "is appropriate where the particular
22 facts and equities show the existence of an alter ego relationship and require that the corporate
23 fiction be ignored so that justice may be promoted." *Id.*, at 904, 8 P.3d at 846.

24 4. The Court, concludes that: (a) Mitchell, Liberman and the Related Entities
25 commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;
26 (c) Mitchell, Liberman and the Related Entities committed unauthorized diversion of funds; (d)
27
28

1 Mitchell, Liberman and the Related Entities treated assets of the other entities as their own; and
2 (e) the Related Entities failed to observe corporate and LLC formalities.

3 5. The Court further concludes the evidence demonstrates that the Related Entities:
4 (a) are and were influenced and governed by Mitchell and Liberman; (b) there is such unity of
5 interest and/or ownership that Mitchell, Liberman and the Related Entities are inseparable from
6 the other; and (c) the facts are such that adherence to the fiction of separate entities would, under
7 the circumstances, sanction a fraud or promote injustice.

8
9 6. Justice and equity require that the Court impose alter ego liability on Mitchell,
10 Liberman and the Related Entities.

11 7. Nype has proven, by a preponderance of the evidence his claim for alter ego,
12 establishing that Mitchell, Liberman, and each of the Related Entities, is the alter ego of LVLP
13 and each other.

14
15 8. Nype has not proven, by a preponderance of the evidence, his claim for alter ego
16 that Mitchell Holdings is the alter ego of Mitchell.

17 9. Mitchell, Liberman and each of the Related Entities are jointly and severally liable
18 on Nype's Judgment and the damages, attorney's fees and costs awarded in this action.

19 10. Prior to September of 2015, Nype had reason to know that the limited transfers
20 were transfers made by debtors under the UFTA, that the transfers rendered debtors insolvent (or
21 contributed thereto) or the facts and circumstances upon which this Court utilized in determining
22 that the transfers were made with the actual intent to hinder, delay or defraud creditors (including
23 Nype).
24
25
26
27
28

1 11. Nype has proven, by a preponderance of the evidence his claims for fraudulent
2 transfer, including that certain of the distributions constitute fraudulent transfers within the
3 meaning of NRS 112.180(1)(a).⁹

4 12. Certain of those distributions were made outside the limitations period under NRS
5 112.230(1).

6 13. Nevada's Uniform Fraudulent Transfer Act provides an equitable remedy for
7 creditors affected by a fraudulent transfer, but nothing more. *Cadle Co. v. Woods & Erickson,*
8 *LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015).

9 14. Nype has proven by a preponderance of the evidence that he suffered damages in
10 the amount of \$341,934.47 as a result of the fraudulent transfer of the proceeds of the Leah
11 transaction with Casino Coolidge directly to Liberman and Mitchell, rather than to Leah's parent
12 LVLP.
13

14 15. The earlier transfers are barred by the limitations period for purposes of the
15 fraudulent transfer claim, only.

16 16. Nype has proven by a preponderance of the evidence that he suffered special
17 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the
18 total amount of \$4,493,176.90.¹⁰

19 17. Plaintiff cannot recover on a civil conspiracy claim (or accessory liability) for
20 allegations arising out of NRS Chapter 112 against a nontransferor. *Cadle Co. v. Woods &*
21 *Erickson, LLP*, 131 Nev. 114 at 120, 345 P.3d 1049 (2015).
22

23
24
25 ⁹ The Court is cognizant of the possibility of duplicative awards given the various claims
for relief.

26 ¹⁰ The Court has previously evaluated the *Brunzell* factors in connection with the sanctions
27 order which has now been satisfied. See 12/26/19 filing. That evaluation is incorporated by
reference.
28

1 18. Independent of NRS Chapter 112, to prove a civil conspiracy, Plaintiff must prove
2 "a combination of two or more persons who, by some concerted action, intend to accomplish a
3 lawful objective for the purpose of harming another, and damage results from the act or acts."
4 *Hilton Hotels vs. Butch Lewis Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).

5 19. The Court concludes that the evidence demonstrates that:

6 a. Mitchell and Liberman, engaged in conscious, concerted and ongoing
7 efforts to conceal, hide, convey, keep secret and/or distribute millions of dollars in assets away
8 from Nype;

9 b. Mitchell and Liberman received distributions from LVLP and the Related
10 entities;

11 c. Mitchell, fabricated and backdated evidence to facilitate the destruction
12 and/or concealment of material financial evidence by his agent that would have greatly assisted
13 Nype's case.

14 d. But for Nype's pretrial discovery,¹¹ the fabrication of evidence would not
15 have been uncovered.

16 20. Nype has proven his claim of civil conspiracy, by a preponderance of the evidence
17 against Mitchell and Liberman.

18 21. Plaintiff has not established by a preponderance of the evidence the elements of
19 civil conspiracy separate and apart from the distributions and fabrication of evidence.

20 22. Plaintiff has established damages on the civil conspiracy claim in the amount of
21 \$15,148.339.

22 23. Nype has not demonstrated that punitive damages are appropriate in this matter.

23
24
25
26 ¹¹ The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is
27 instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at
28 1391-3 (1998).

1 24. Nype is entitled to recover his attorney's fees as special damages as he was
2 successful on his claim for civil conspiracy in the total amount of \$4,493,176.90.

3 25. Nype has not established a claim for constructive trust given the current state of
4 title of the remaining parcels in which the Related Entities hold their interest.

5 26. Mitchell, Liberman, and the Related Entities' actions and inactions have caused
6 Nype damages in the total amount of \$19,641,515.90.¹²

7 27. Nype may also file a post-trial motion if appropriate, for fees and costs not proven
8 during the trial as special damages.

9 28. Given the findings and conclusion no further relief on the Declaratory Relief claim
10 is appropriate.

11 29. If any conclusions of law are properly findings of fact, they shall be treated as if
12 appropriately identified and designated.

13 Based upon the foregoing Findings of Fact and Conclusions of Law:

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
15 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer
16 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,
17 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC
18 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent
19 conveyance claim in the amount of \$4,835,111.37.¹³

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
21 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell and Liberman on
22

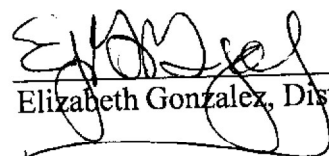
23
24
25
26 ¹² This is the total amount of damages which is not duplicated among the various claims for
27 which the Court has made an award.

28 ¹³ These damages are duplicated in the civil conspiracy judgment.

1 the civil conspiracy claim in the amount of \$19,641,515.90.

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
3 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer
4 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,
5 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC
6 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the alter ego claim in
7 the amount of the underlying judgment in A551073.
8

9 DATED this 17th day of January, 2020.

10
11 
12 Elizabeth Gonzalez, District Court Judge
13

14 **Certificate of Service**

15 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of
16 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth
17 Judicial District Court Electronic Filing Program.

18 *If indicated below, a copy of the foregoing Scheduling Order was also:*

19 ☐ Placed in the Attorney(s) Folder on the 1st Floor of the RJC for;

20 ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at
21 their last known address(es):
22

23 
24 Dan Kutinac
25
26
27
28

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

BARNET LOUIS LIBERMAN,

Debtor.

Case No. 21-70611-reg

Chapter 7

-----X
RUSSELL NYPE and REVENUE PLUS, LLC,

Plaintiffs,

Adv. Proc. No. 21-8123-reg

v.

BARNET LOUIS LIBERMAN,

Defendant.
-----X

MEMORANDUM DECISION AND ORDER
DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

In this adversary proceeding, the Plaintiffs, Russell Nype and Revenue Plus, LLC (together “Nype” or “Plaintiffs”) are seeking, under 11 U.S.C. § 523(a)(2)(A) and (a)(6), to except from the Debtor’s discharge liability stemming from a pre-petition judgment entered against the Debtor and others by a Nevada state court (“Nevada Court”). That judgment was supported by Amended Findings of Fact and Conclusions of Law, dated January 17, 2020, which the Nevada Court entered after a trial on the merits. *See* District Court, Clark County, Nevada, Amended Findings of Fact and Conclusions of Law, Case No. A-16-740689-C, Jan. 17, 2020 (“Nevada Judgment”). The Nevada Judgment has three separate elements: an award in the amount of \$4,835,111.37 attributed to fraudulent conveyances under Nevada law (“Fraudulent Conveyance Award”); an award in the amount of \$19,641,515.90 attributed to a finding of civil conspiracy under Nevada law (“Civil Conspiracy Award”); and a finding (“Alter Ego Finding”)

that the Debtor and others are liable, under a Nevada alter ego theory for a prior judgment (“LVLP Judgment”) in the amount of approximately \$2,600,000, entered against an entity, Las Vegas Land Partners LLC (“LVLP”), owned and controlled by the Debtor and his business partner, David J. Mitchell (“Mitchell”).

Before the Court is Plaintiffs’ motion for partial summary judgment seeking judgment as a matter of law solely as to the Fraudulent Conveyance Award. Relying on the doctrine of collateral estoppel, the Plaintiffs argue that the findings and conclusions made in the Nevada Judgment are sufficient to establish the elements of non-dischargeability under § 523(a)(2)(A) and the Debtor should be precluded from presenting any defense on that claim. The Debtor argues that the Nevada Judgment does not contain the necessary specificity with respect to the elements of the § 523(a)(2)(A) asserted here and the Plaintiffs’ motion should be denied.

Based on the record before it today, the Court cannot give any preclusive effect to the Nevada Judgment. The Court cannot find, based on the current record, that the Nevada Judgment is a valid and enforceable judgment. The litigation commenced by Nype, which resulted in the Nevada Judgment, was commenced in aid of collecting on Nype’s prior judgment against LVLP, the LVLP Judgment (“Collection Litigation”). Subsequent to commencement of the Collection Litigation, but prior to entry of the Nevada Judgment, LVLP filed for relief under chapter 7 of the Bankruptcy Code. LVLP was a named defendant in the Collection Litigation. Upon LVLP’s bankruptcy filing, the fraudulent conveyance claims asserted in the Collection Litigation became property of the LVLP estate. The Collection Litigation continued as against all defendants except LVLP, and the LVLP chapter 7 trustee intervened as a co-plaintiff with Nype as the proper party to assert the fraudulent conveyance claims on behalf of the LVLP estate.

In a recent decision, the Bankruptcy Appellate Panel of the Ninth Circuit found that “postpetition prosecution of a fraudulent transfer claim against nondebtor parties violates § 362(a)(1).” *Koeberer v. California Bank of Commerce et al. (In re Koeberer)*, BAP No. NC-21-1078-FBS, Bk. No. 20-110514, 2021 WL 5371142 at *1 (B.A.P. 9th Cir. Nov. 18, 2021). If, in fact, the Nevada Judgment was entered in violation of the stay imposed by the LVLP bankruptcy filing, then it cannot be given collateral estoppel effect here.

The Motion is denied without prejudice.

FACTS

Sometime in 2005 the Debtor and his business partner David Mitchell asked Nype to help them find a partner to assist their company LVLP with the development of certain real property in Downtown Las Vegas.¹ (Nevada Judgment at 4, ¶27). In late 2006 or early 2007, a dispute arose between LVLP and Nype over Nype’s fee. (Nevada Judgment at 4, ¶28). LVLP sued Nype in late 2007 seeking a declaratory judgment that it owed Nype no fee, and Nype counterclaimed seeking compensation for services rendered.

On April 10, 2015, the Nevada Court entered a judgment against LVLP in favor of Nype in the amount of \$2,608,797 plus interest and costs. (District Court, Clark County, Nevada, Findings of Fact, Conclusions of Law and Decision, Case No. 07A551073, Mar. 26, 2015 (“LVLP Decision”); District Court, Clark County, Nevada, Judgment, Case No. 07A551073, Apr. 10, 2015 (“LVLP Judgment”)).

¹ Initially, Nype worked for LVLP through First Wall Street Capital International (“FWS”), but FWS and Nype had a falling out over Nype’s fee share agreement for the LVLP work resulting in FWS terminating its relationship with Nype who nonetheless continued working on the deal for LVLP (LVLP Decision at 3, ¶¶ 14-37).

Nype collected only \$10,000 on the LVLP Judgment. (Nevada Judgment at 5, ¶¶ 34, 35).

In 2017, Nype sued Mitchell, Liberman, LVLP and several related entities (“Related Entities”),² alleging that the defendants in that action engaged in an “Asset Protection Scheme” for the purpose of “secreting, hiding, and conveying away [from LVLP] valuable assets that were available to satisfy creditors [of LVLP] such as [Nype]” (District Court, Clark County, Nevada, Case No. A-16-740689-B, Amended Complaint, dated August 21, 2017, ¶56) (“Collection Litigation”). The Collection Litigation asserted claims for constructive trust, fraudulent conveyance, civil conspiracy, declaratory relief, and alter ego.

In August 2019, while the Collection Litigation was pending, LVLP filed a petition under chapter 7 of the Bankruptcy Code. (Bankr. D. Nev., Case No. 19-15333-mkn, “LVLP Bankruptcy”). After the LVLP Bankruptcy was filed, the Nevada Court continued the Collection Litigation as to the Debtor, Mitchell and the Related Entities, but not as to LVLP.

On October 21, 2019, the chapter 7 trustee appointed in the LVLP Bankruptcy filed an application to retain John W. Muije & Associates (“Muije & Associates”) on a contingency fee basis as her special counsel to prosecute the fraudulent transfer claims asserted in the Collection Litigation. The retention application specifically recognized that the fraudulent transfer claims in the Collection Litigation were property of the LVLP Bankruptcy estate. (LVLP Bankruptcy, Dkt #28, Retention Application, ¶ 6).³ By order of the Nevada bankruptcy court, dated October 31,

² The “Related Entities,” as the Nevada Court noted, include: LVLP; Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC Successor LLC, FC/LiveWork Vegas LLC, and Casino Coolidge LLC.

³ The retention application recognized that Nype’s claim in the LVLP Bankruptcy represented approximately 97% of the creditor body. The retention agreement attached to the retention application states: “Subject to Bankruptcy Court approval, 50% of any funds collected from the Defendants as a

2019, Muije & Associates was retained to represent the LVLP trustee as to the fraudulent conveyance claims. Muije & Associates continued to represent Nype as co-plaintiff on the remainder of the claims in the Collection Litigation. (LVLP Bankruptcy, Dkt #35). The LVLP trustee intervened as a plaintiff in the Collection Litigation and filed a “complaint in intervention” on November 18, 2019. The LVLP Bankruptcy case is still open.⁴

On January 17, 2020, after a trial on the merits in the Collection Litigation, the Nevada state court entered Amended Findings of Fact and Conclusions of Law which included a judgment against Mitchell, Liberman and the Related Entities in the total amount of \$19,641,515.90 (“Nevada Judgment”).

PROCEDURAL HISTORY

On April 1, 2021, Barnet Louis Liberman (the “Debtor” or “Liberman”) filed a petition for relief under chapter 11 of the Bankruptcy Code. The case was converted to chapter 7 on June 28, 2021. On August 24, 2021, the Plaintiffs filed a proof of claim in this case in the amount of \$19,664,231.90 based on the Nevada Judgment. Thereafter Plaintiffs filed a complaint seeking non-dischargeability of the \$19,641,515.90 claim under §§ 523(a)(2)(A) and 523(a)(6) of the Bankruptcy Code. On September 23, 2021, Plaintiffs filed the instant motion for partial summary judgment on the § 523(a)(2)(A) claim with regard only to the \$4,835,111.37 Fraudulent Conveyance Award.

result of the State Court Litigation will be the property of [Nype] and 50% will be the Property of the [LVLP Bankruptcy estate].”

⁴ As noted by Nype in the summary judgment motion, “[t]his Court is permitted to take judicial notice of publicly filed documents such as those filed on the dockets of other courts.” (Motion for Summary Judgment, Dkt #12, note 1).

DISCUSSION

The Plaintiffs' entire motion is premised upon this Court applying collateral estoppel to the Nevada Judgment. In order to apply collateral estoppel to the Nevada Judgment, the judgment must be valid and enforceable. *See In re Dabrowski*, 257 B.R. 394 (Bankr. S.D.N.Y. 2001). Actions taken in violation of the stay imposed by § 362 of the Bankruptcy Code are void, not merely voidable. *See Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994) (citing *48th St. Steakhouse, Inc. v. Rockefeller Grp., Inc (In re 48th St. Steakhouse, Inc.)*, 835 F.2d 427, 431 (2d Cir. 1987)); *Hillis Motors, Inc v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 586 (9th Cir. 1993). The Bankruptcy Appellate Panel for the Ninth Circuit recently held that a creditor's continuation of a state court fraudulent conveyance action against non-debtor entities was a violation of the automatic stay, even though the debtor was separated out from the action. *Koeberer v. California Bank of Commerce et al. (In re Koeberer)*, BAP No. NC-21-1078-FBS, Bk. No. 20-110514, 2021 WL 5371142 at *5-6 (B.A.P. 9th Cir. Nov. 18, 2021) (citing *FDIC v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125 (2d Cir. 1992)). This Court takes judicial notice of the docket in the LVLP Bankruptcy and notes that there is no order granting relief from stay to allow the Collection Litigation to proceed. In light of this fact, and in light of *In re Koeberer*, this Court cannot find, based on the current record, that the Nevada Judgment is a valid and enforceable judgment entitled to collateral estoppel effect.⁵

⁵ Assuming Plaintiffs are able to supplement the record or otherwise get past the issue raised here, the Court has concerns with Nype's standing to assert a claim against the Debtor based on the Fraudulent Conveyance Award. The LVLP trustee intervened in the Collection Litigation as the proper party plaintiff entitled to assert the fraudulent conveyance claims on behalf of the LVLP estate. Although Nype may benefit from any distribution in the LVLP bankruptcy, the Fraudulent Conveyance Award, it appears, is property of the LVLP bankruptcy estate, not Nype. In addition, on the merits of the collateral estoppel argument, the Court has concerns with the Nevada Judgment's failure to make any specific findings as to the Debtor's individual actions and the Debtor's individual intent to defraud, as opposed to collective findings made against the Debtor as part of a larger group of defendants.

CONCLUSION

The Plaintiffs' motion for partial summary judgment is denied without prejudice. The pre-trial conference in this matter is restored to the Court's calendar on December 20, 2021 at 9:30 a.m for further proceedings consistent with this Memorandum Decision.

So ordered.

**Dated: Central Islip, New York
December 3, 2021**



A handwritten signature in black ink, appearing to read "Robert E. Grossman". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Robert E. Grossman
United States Bankruptcy Judge**

EXHIBIT F

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In the case of Las Vegas Land Partners, LLC

--and--

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Revenue Plus LLC, Judgment Creditors

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re

BARNET LOUIS LIBERMAN,

Debtor.

Case No. 8-21-70611-REG

Chapter 7

**MOTION TO LIFT STAY TO MOVE IN
NEVADA BANKRUPTCY CASE OF LVLP**

Hearing Date: January 24, 2022

Hearing Time: 9:30 a.m.

Shelley D. Krohn, the Chapter 7 Trustee in the case of Las Vegas Land Partners, LLC (the “Nevada Trustee”), by and through her counsel, Houmand Law Firm, LTD., and Russell Nype and Revenue Plus, LLC (collectively, “Nype”), by and through its co-counsel, Schwartzer & McPherson Law Firm and Rivkin Radler LLP, (the Nevada Trustee and Nype are collectively referred to as “Movants”) move this Court to modify the automatic stay to allow the Nevada Trustee and Nype to move the United States Bankruptcy Court for the District of Nevada (the “Nevada Bankruptcy Court”) to consider and rule upon a Motion to Annul the Automatic Stay to be filed in the bankruptcy case of Las Vegas Land Partners, LLC, Case No. 19-15333-MKN (the “LVLP Bankruptcy Case”) to be filed by the Movants. In the LVLP Bankruptcy Case, the Nevada Bankruptcy Court had previously authorized the Nevada Trustee to employ counsel to pursue litigation against Barnet Louis Liberman (“Liberman”) and others in the Eighth Judicial District Court (the “Nevada State Court”). The Nevada Trustee intervened in the Nevada State Court case and a judgment was ultimately issued in favor of the Nevada Trustee and Nype by the Nevada State Court.

This Court has raised the issue as to the validity of the judgment issued by the Nevada State Court on the grounds that the automatic stay was not lifted by the Nevada Bankruptcy Court in the LVLP Bankruptcy Case to permit the litigation in the Nevada State Court to proceed. The Nevada Trustee and Nype request

permission of this Court to move the Nevada Bankruptcy Court to annul the automatic stay as permitted by Bankruptcy Code §362(d).

The issue of whether to annul the automatic stay in the LVLP Bankruptcy Case is a core proceeding in the LVLP Bankruptcy Case. 28 U.S.C. § 157(b)(2).

FACTS

1. Las Vegas Land Partners, LLC (“LVLP”) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on August 19, 2019 (the “Petition Date”). The Nevada Trustee is the duly appointed and acting Chapter 7 Trustee.

2. Prior to the Petition Date, Russell Nype and Revenue Plus, LLC obtained a judgment dated April 10, 2015 against LVLP for approximately \$4,500,000.

3. Prior to the Petition Date, on July 26, 2016, Nype sued LVLP, Barnet Liberman and others (collectively, the “Co-Defendants”) in the Eighth Judicial District Court as Case No. A-16-740689-B (the “State Court Litigation”).

4. In the State Court Litigation and in prior litigation, John Muije & Associates (the “Muije Firm”) represented Nype.

5. The filing of LVLP’s petition automatically stayed the State Court Litigation against LVLP and the prosecution of the fraudulent transfer and alter ego causes of action, which were property of the LVLP bankruptcy estate.

7. In the LVLP Bankruptcy Case, the Nevada Trustee employed the Muije Firm to prosecute the claims belonging to the LVLP bankruptcy estate.

8. The Nevada Bankruptcy Court approved the employment of the Muije Firm to prosecute the claims belonging to the LVLP bankruptcy estate.

9. The Nevada Trustee thereafter intervened in the State Court Litigation which had previously been commenced by Nype.

10. The record of the State Court Litigation shows that the fraudulent transfer claims and the alter ego claims belonging to the LVLP Bankruptcy Estate were prosecuted by the Muije Firm on behalf of the Nevada Trustee.

11. The Nevada State Court conducted a multi-day trial of the State Court Litigation.

12. As a result of the trial in the Nevada State Court, Amended Findings of Fact and Conclusions of Law (the “Judgment”) were entered against Liberman and his co-defendants.

13. In the pending adversary proceeding objecting to the dischargeability of the Judgment against Liberman in this Court, this Court has questioned the validity of the Judgment issued by the Nevada State Court based on the lack of an order lifting the automatic stay in the LVLP Bankruptcy Case (which is still pending in the Nevada Bankruptcy Court).

14. The Movants assert that no order lifting the automatic stay in the LVLP Bankruptcy Case was required because the claims belonging to the LVLP bankruptcy estate were prosecuted by the Nevada Trustee.¹

15. It is respectfully submitted that the Nevada Bankruptcy Court is the only court with jurisdiction to annul the automatic stay in the LVLP Bankruptcy Case.

16. The Movants have prepared and are ready to file a MOTION TO ANNUL STAY TO ELIMINATE AN ISSUE CONCERNING THE STATE JUDGMENT,

17. A draft copy of such motion is attached hereto as Exhibit “A” (the “Motion to Annul Stay”).

¹ The automatic stay does not apply to actions by a debtor or trustee in an offensive posture. *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir.1989); *In re United States Abatement Corp.*, 157 B.R. 278, 279 (E.D.La.1993), *aff'd*, 39 F.3d 563 (5th Cir.1994); *Carley Cap. Grp. v. Fireman's Fund Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir. 1989).

"[T]he automatic stay provision of Section 362 ' "by its terms only stays proceedings against the debtor," and "does not address actions brought by the debtor which would inure to the benefit of the bankruptcy estate." ' " *In re Fin. News Network Inc.*, 158 B.R. 570, 572 (S.D.N.Y. 1993) (quoting *Carley Capital Grp. v. Fireman's Fund Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir. 1989) (per curiam) (quoting *Ass'n of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir. 1982))) (emphasis in *St. Croix*).

Tenas-Reynard v. Palermo Taxi Inc., No. 14 CIV. 6974 (PGG), 2016 WL 1276451, at *7 (S.D.N.Y. Mar. 30, 2016).

MEMORANDUM OF LAW

A. RULES FOR LIFTING STAY FOR LITIGATION

The Movants request that the automatic stay in this case be modified to permit the Movants to file a motion to annul the automatic stay in the LVLP Bankruptcy Case. 11 U.S.C. § 362 pertains to the lifting of the automatic stay and provides that a Court may grant the request of a moving party to modify the automatic stay for cause. *See* 11 U.S.C. § 362(d)(1). Although the Bankruptcy Code does not define “cause,” courts have granted relief from stay under § 362(d)(1) when necessary to permit pending litigation to be concluded in another forum if the nonbankruptcy suit involves multiple parties or is ready for trial.

The Second Circuit has observed that “[n]either the statute nor the legislative history defines the term ‘for cause.’ ” *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1285 (2d Cir. 1990). The *Sonnax* court identified several factors to be considered in deciding whether cause exists to lift the automatic stay to allow litigation to proceed in another forum. *See also, In re Curtis*, 40 B.R. 795, 799-800 (Bankr.D. Utah 1984). The *Sonnax/Curtis* factors are also used by bankruptcy courts in the Ninth Circuit. *See In re EB Holdings II, Inc.*, 591 B.R. 10, 15 (Bankr. D. Nev. 2018).

ARGUMENT

A. THE STAY SHOULD BE LIFTED TO ALLOW THE NEVADA BANKRUPTCY COURT TO DETERMINE IF THE AUTOMATIC STAY SHOULD BE ANNULLED IN THE LVLP BANKRUPTCY CASE.

While it is and remains the position of the Movants that the automatic stay in the LVLP Bankruptcy Case did not enjoin the prosecution of the claims in the State Court Litigation once the Nevada Trustee became a Plaintiff in Intervention, the Movants are asking this Court to allow the Nevada Bankruptcy Court to determine an issue concerning the automatic stay in the LVLP Bankruptcy Case, which is pending before that Court.

The determination of motions concerning the automatic stay in the LVLP Bankruptcy Case are “core matters” for the Nevada Bankruptcy Court. See 28 U.S.C. §157(b)(2). While other courts may have jurisdiction to determine the applicability of the automatic stay in cases before them, only the Nevada Bankruptcy Court can annul the automatic stay in the LVLP Bankruptcy Case.

The determination of the Motion to Annul Stay will require the application of law which may be different in the Ninth Circuit than in the Second Circuit. It would be appropriate for the Nevada Bankruptcy Court to make that determination and apply Ninth Circuit law. Bankruptcy courts “are bound by the law of their own circuit.... They are not to resolve splits between circuits no matter how egregiously in error they may feel their own circuit to be.” *See Hasbrouck v. Texaco, Inc.*, 663

F.2d 930, 933 (9th Cir.1981); *In re ANC Rental Corp., Inc.*, 341 B.R. 178, 179 (Bankr. D. Del. 2006).

The Nevada Trustee and Nype are asking for an order lifting the stay in the Liberman bankruptcy case, which will allow the Nevada Bankruptcy Court to determine if the automatic stay should be annulled in the LVLP Bankruptcy Case or to determine that the automatic stay was inapplicable to eliminate the issue of whether the trial by the Nevada State Court of the Nevada Trustee's claims and the resulting Judgment violated the automatic stay in the LVLP Bankruptcy Case. For this motion, the Nevada Trustee and Nype present their analysis of the *Sonnax/Curtis* factors, as follows:

- (1) **Whether the relief will result in a partial or complete resolution of the issues:** The lifting of the stay in the case before this Court will allow the Nevada Bankruptcy Court to determine if the automatic stay should be annulled in the LVLP Bankruptcy Case, thereby eliminating this issue from this Court's analysis of the validity of the Judgment. All the remaining issues involved in the State Court Case, including the amount of damages owed by the Debtor and its non-debtor co-defendants would then be deemed finally determined, eliminating the need for a retrial in State Court and, possibly, a trial in this Court. **This factor favors lifting the stay.**

- (2) **The lack of any connection with or interference with the bankruptcy case:** Lifting the stay in this case to allow the Nevada Bankruptcy Court to consider the potential annulment of the stay in the LVLP Bankruptcy Case will not interfere with the administration of the Liberman bankruptcy estate. To the contrary, it will potentially eliminate an issue in the adversary proceeding. It will allow for judicial economy in the pending adversary proceeding against Liberman only and will not affect the Liberman bankruptcy estate. **This factor favors lifting the stay.**
- (3) **Whether the foreign proceeding involves the debtor as a fiduciary:** Not applicable. **This factor is neutral.**
- (4) **Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases:** The Nevada Bankruptcy Court is the only court which can determine whether or not to annul the automatic stay in the LVLP Bankruptcy Case. **This factor favors lifting the stay.**
- (5) **Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation:** No. There is no insurance which would cover the defense of the Motion to Annul Stay. **This factor does not favor lifting the stay.**

- (6) **Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question:** No. **This factor does not favor lifting the stay.**
- (7) **Whether the litigation in another forum would prejudice the interests of other creditors, the creditors committee, and other interested parties:** No. These parties won't be prejudiced. The main issue in the Nevada State Court was the fraud committed by Liberman and his co-defendants.² Liberman's bankruptcy estate, trustee and creditors are not parties to the pending adversary proceeding. **This factor favors lifting the stay.**
- (8) **Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c):** No. Equitable subordination is not involved in the State Court litigation. **This factor favors lifting the stay.**
- (9) **Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f):** No. **This factor favors lifting the stay.**
- (10) **The interest of judicial economy and the expeditious and**

² The other defendants in the Nevada State Court Litigation, being non-debtors, have all assumed that the Judgment was a final judgment and have appealed the decision of the Nevada State Court. That appeal is still pending.

economical determination of litigation for the parties: Yes. The Nevada State Court has already tried the fraudulent conveyance case against Liberman and multiple non-debtor co-defendants. The Nevada Bankruptcy Court has already authorized the Nevada Trustee to employ counsel who tried the case. The Nevada Bankruptcy Court is familiar with the facts and issues in the State Court Litigation and has the jurisdiction to determine if annulling the automatic stay is appropriate.

This factor favors lifting the stay.

- (11) **Whether the foreign proceedings have progressed to the point where the parties are prepared for trial:** Yes. The State Court Litigation was already tried. The Motion to Annul can be set in the ordinary course and be heard within 30-45 days after the stay is lifted in this case. **This factor favors lifting the stay.**

- (12) **The impact of the stay on the parties and the “balance of hurt”:** The annulment of the automatic stay in the LVLP Bankruptcy Case can only be determined by the Nevada Bankruptcy Court. This is an issue that must be determined. Otherwise, all the parties to the State Court Litigation are left in limbo. This benefits all parties to that litigation. **This factor favors lifting the stay.**

Based on these factors, this Court should lift the stay to allow the Nevada

Bankruptcy Court to consider the Motion to Annul Stay. The Movants are **not** asking that the stay be lifted to allow any other litigation against Liberman or the Liberman Bankruptcy Estate in the LVLP Bankruptcy Case.

WHEREFORE, the Nevada Trustee and Nype request that this Court enter an order:

1. Lifting the automatic stay to allow the Movants to move the Nevada Bankruptcy Court to consider the Motion to Annul Stay.

2. For such other and further relief as this Court deems just and proper.

Dated: Las Vegas, Nevada
December 22, 2021

/s/ Lenard E. Schwartzer
Lenard E. Schwartzer, Esq.
Schwartz & McPherson Law Firm
2850 South Jones Blvd., Suite 1
Las Vegas, NV 89146

and

Dated: Uniondale, New York
December 22, 2021

/s/ Stuart I. Gordon
Stuart I. Gordon, Esq.
Matthew V. Spero, Esq.
RIVKIN RADLER LLP
926 RXR Plaza
Uniondale, New York 11556-0926

and

Dated: Las Vegas, Nevada
December 22, 2021

/s/ Jacob L. Houmand
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Counsel for Russell Nype and Revenue Plus, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re: LAS VEGAS LAND PARTNERS, LLC, Debtor.	Case No. BK-S-19-15333-MKN Chapter 7 MOTION TO ANNUL STAY TO VALIDATE STATE COURT JUDGMENT Hearing Date: January 26, 2021 Hearing Time: 2:30 p.m.
--	--

SHELLEY D. KROHN (“Trustee”), the Chapter 7 Trustee in the case of Las Vegas Land Partners, LLC (“LVLP”), by and through her counsel, Jacob I. Houmand, and RUSSELL NYPE and REVENUE PLUS, LLC (collectively, “Nype”), by and through their counsel, Schwartzer & McPherson Law Firm by Lenard E. Schwartzer, (Trustee and Nype are sometimes referred to as “Movants”) hereby move this Court to annul the automatic stay in this case to eliminate the question of whether the Amended Findings of Fact and Conclusions of Law (“Judgment”) entered January 17, 2020 by the Nevada District Court (the “State Court”) in Case No. A-16-740689-B (the “State Court Litigation”) violated the automatic stay in this case. The reason for annulling the automatic

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1 stay in this case is to eliminate an issue in the bankruptcy case of one of the defendants,
2 Barnet Louis Liberman (“Liberman”) concerning the validity and preclusive effect of the
3 Judgment.

4 It appears that all parties in this bankruptcy case and in the State Court case
5 assumed that the employment of counsel by the Trustee and the intervention of the Trustee
6 in the State Court Litigation *as a plaintiff* eliminated the need for an order lifting the stay
7 in this case. In the pending bankruptcy case of Liberman, one of the defendants in the State
8 Court Litigation, Nype commenced an adversary proceeding objecting to the discharge of
9 Nype’s claims flowing from the Judgment. The Bankruptcy Court for the Eastern District
10 of New York, which is presiding over the bankruptcy case of Liberman and the adversary
11 proceeding, has taken the opposite position and questioned the validity of the Judgment
12 issued by the State Court in favor of the Movants – which issue was never raised by
13 Liberman in any court.

14 FACTS

15 1. LVLP filed a voluntary petition for relief under Chapter 7 of the Bankruptcy
16 Code on August 19, 2019 (the “Petition Date”). [ECF 1]. The Nevada Trustee is the duly
17 appointed and acting Chapter 7 Trustee in that case. [ECF 2].

18 2. Prior to the Petition Date, Russell Nype and Revenue Plus, LLC
19 (collectively, “Nype”) obtained a judgment dated April 10, 2015 against LVLP issued by
20 the Eighth Judicial District Court in Case No.07-A-551073. After an appeal to the Nevada
21 Supreme Court, an Amended and Final Judgment on Costs dated November 1, 2018 was
22 issued. Currently, the amount due on the two judgments is approximately \$4,500,000.

23 3. Prior to LVLP’s Petition Date, on July 26, 2016, NYPE sued the Debtor,
24 DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS,
25 LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC;
26 WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIAS
27 OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC;
28 LIEBERMAN HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC

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1 SUCCESSOR, LLC; PC/LIVE WORK VEGAS, LLC; CASINO COLLIDGE, LLC
2 (collectively, the “Co-Defendants”) in the State Court Litigation.

3 4. In the State Court Litigation and in the prior litigation, John W. Muije and
4 Associates (the “Muije Firm”) represented Nype.

5 5. In the State Court Litigation, Nype alleged (a) he was entitled to a
6 constructive trust on property of the Co-Defendants; (b) he was entitled to avoid fraudulent
7 transfers of real property by the LVLP and Co-Defendants; (c) LVLP and Co-Defendants
8 had conspired to defraud Nype; (d) he was entitled to a declaration that the transfers of real
9 property by LVLP and Co-Defendants were void; and (e) he was entitled to a declaration
10 that the Co-Defendants were the alter egos of LVLP and their assets could be used to pay
11 the debt to Nype.

12 6. The filing of LVLP’s petition automatically stayed the State Court Litigation
13 against LVLP and the prosecution of the fraudulent transfer and alter ego causes of action,
14 which are property of the LVLP bankruptcy estate.

15 7. In the LVLP Bankruptcy Case, the Trustee filed the Application to Employ
16 John W. Muije & Associates as Special Counsel on a Contingent Fee Basis Under 11
17 U.S.C. §327(a). [ECF 28].

18 8. In this Application, the Nevada Bankruptcy Court was informed:

19 “6. The filing of the debtor’s petition automatically stayed...(b)
20 the prosecution of the fraudulent transfer action which is property of the
21 Debtor’s bankruptcy estate.

22 ***

23 13. The Muije Firm agreed to turn over to the trustee fifty percent
24 (50%) of all funds and assets collected or recovered from the defendants
25 attributable to any claims litigated in the State court Litigation

26 14. The professional services rendered by the Muije Firm will be
27 limited to representation of the trustee in recovering the fraudulent transfers
28

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1 as to which the Debtor's bankruptcy estate claims an interest and are claims
2 asserted in the pending State Court Litigation."

3 9. In the LVLP Bankruptcy Case, the Declaration of John W. Muije in Support
4 of Application to Employ John W. Muije & Associates as Special Counsel was filed.
5 [ECF 29].

6 10. In this Declaration, Mr. Muije states:

7 "12. 50% of any funds and assets collected or recovered from the
8 Co-Defendants by the Muije Firm in the State Court litigation... will be
9 turned over to the Trustee.

10 13. The professional services rendered by the Muije Firm will be
11 limited to representation of the trustee in challenging the fraudulent
12 conveyances as to which the Debtor's bankruptcy estate claims an interest
13 and are claims asserted in the pending State Court litigation."

14 11. In the LVLP Bankruptcy Case, the Declaration of Shelley D. Krohn in
15 Support of Application to Employ John W. Muije & Associates as Special Counsel was
16 filed. [ECF 30].

17 12. In this Declaration, Trustee Krohn stated:

18 13. I have required that 50% of any funds and assets collected or
19 recovered from the Co-Defendants by the Muije Firm in the State Court
20 litigation (except for the previously awarded discovery sanction) will be
21 turned over to me as trustee.

22 ***

23 17. I have been informed that the Muije Firm will continue to
24 represent Nype with respect to all claims other than the recovery of
25 fraudulent transfers, and because of the agreement between the trustee and
26 Nype, 50% of the recovery and funds collected from the Co-Defendants will
27 not belong to Debtor's estate ("Non-estate Property").

28 ***

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1 23. In my business judgment, it is in the best interests of the
2 debtor's bankruptcy estate to employ the Muije Firm on a contingent fee
3 basis to pursue the bankruptcy estate's claims against the Co-Defendants."

4 13. Based upon these documents, this Court entered the Order Granting
5 Application to Employ John W. Muije & Associates as Special Counsel on a Contingent
6 Fee Basis Under 11 U.S.C. §327(a). [ECF 35].

7 14. The record of the State Court Litigation shows that the fraudulent transfer
8 claims and alter ego claims belonging to the LVLP Bankruptcy Estate were prosecuted on
9 behalf of Trustee Krohn.

10 15 Trustee Krohn moved to intervene in the State Court Litigation as a plaintiff.
11 Shelley D. Krohn, Trustee's Motion to Intervene attached hereto as Exhibit "A".

12 16. The State Court entered an Order Granting Trustee's Motion to Intervene
13 attached hereto as Exhibit "B".

14 17. Trustee Krohn filed her Complaint in Intervention attached hereto as Exhibit
15 "C".

16 18. The Complaint in Intervention shows that the alter ego allegations were
17 prosecuted on behalf of Trustee Krohn and the LVLP Bankruptcy Estate. See paragraphs
18 84 through 97 and 136-137 of the Complaint in Intervention.

19 19. The Complaint in Intervention shows that the fraudulent conveyance
20 allegations were prosecuted on behalf of Trustee Krohn and the LVLP Bankruptcy Estate.
21 See paragraphs 106 through 111 of the Complaint in Intervention.

22 20. The pleadings filed by Trustee Krohn's counsel include Trustee Krohn as a
23 Proposed Plaintiff in Intervention in the caption.

24 21. As a result of a trial by the Nevada State Court, on January 17, 2020, the
25 Judgment was entered against Liberman and his co-defendants. A copy of that Judgment is
26 attached hereto as Exhibit "D".

27 22. The Muije Firm collected approximately \$400,000 from one of the Co-
28 Defendants-Casino Coolidge, LLC.

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23. Subsequently, the Muije Firm turned over 50% of the funds collected from Casino Coolidge, LLC to Trustee Krohn¹, applied for fees and costs and was awarded fees and costs by the Nevada Bankruptcy Court from the assets of the LVLP Bankruptcy Estate. See First Interim Fee Application Of John W. Muije & Associates For Allowance of Compensation for Services Rendered As Special Litigation Counsel During Period From November 1, 2019 Through April 30, 2020 And For Reimbursement Of Expenses Pursuant To 11 U.S.C. §§330 And 331 And Federal Rule of Bankruptcy Procedure 2016 [ECF 63] and Order Granting First Interim Fee Application Of John W. Muije & Associates For Allowance of Compensation for Services Rendered As Special Litigation Counsel During Period From November 1, 2019 Through April 30, 2020 And For Reimbursement Of Expenses Pursuant To 11 U.S.C. §§330 And 331 And Federal Rule of Bankruptcy Procedure 2016. [ECF 76].

24. More than a year after the entry of the Judgment, on April 1, 2021, Liberman filed a petition for relief under Chapter 11 in the United States Bankruptcy Court for the Eastern District of New York (the “NY Bankruptcy Court”).

25. Liberman’s bankruptcy case was thereafter converted to a case under Chapter 7.

26. Nype filed a timely complaint objecting to the discharge of the debt awarded by the Judgment.

27. Nype filed a Motion for Partial Summary Judgment based on the Judgment.

28. The NY Bankruptcy Court has raised issues concerning the validity and preclusive effect of the Judgment. In its MEMORANDUM DECISION AND ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT, a copy of which is attached as Exhibit “E”, that court stated in relevant part:

Based on the record before it today, the Court cannot give any preclusive effect to the Nevada Judgment. The Court cannot find, based on the current record, that the Nevada Judgment is a valid and enforceable

¹ These are the only funds in the possession of the Trustee.

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1 judgment. The litigation commenced by Nype, which resulted in the Nevada
2 Judgment, was commenced in aid of collecting on Nype's prior judgment
3 against LVLP, the LVLP Judgment ("Collection Litigation"). Subsequent to
4 commencement of the Collection Litigation, but prior to entry of the Nevada
5 Judgment, LVLP filed for relief under chapter 7 of the Bankruptcy Code.
6 LVLP was a named defendant in the Collection Litigation. Upon LVLP's
7 bankruptcy filing, the fraudulent conveyance claims asserted in the
8 Collection Litigation became property of the LVLP estate. The Collection
9 Litigation continued as against all defendants except LVLP, and the LVLP
10 chapter 7 trustee intervened as a co-plaintiff with Nype as the proper party to
11 assert the fraudulent conveyance claims on behalf of the LVLP estate.

12 In a recent decision, the Bankruptcy Appellate Panel of the Ninth
13 Circuit found that "postpetition prosecution of a fraudulent transfer claim
14 against nondebtor parties violates § 362(a)(1)." *Koeberer v. California Bank*
15 *of Commerce et al. (In re Koeberer)*, BAP No. NC-21- 1078-FBS, Bk. No.
16 20-110514, 2021 WL 5371142 at *1 (B.A.P. 9th Cir. Nov. 18, 2021). If, in
17 fact, the Nevada Judgment was entered in violation of the stay imposed by
18 the LVLP bankruptcy filing, then it cannot be given collateral estoppel effect
19 here.

20 The Motion is denied without prejudice.[...]

21 The Plaintiffs' entire motion is premised upon this Court applying
22 collateral estoppel to the Nevada Judgment. In order to apply collateral
23 estoppel to the Nevada Judgment, the judgment must be valid and
24 enforceable. *See In re Dabrowski*, 257 B.R. 394 (Bankr. S.D.N.Y. 2001).
25 Actions taken in violation of the stay imposed by § 362 of the Bankruptcy
26 Code are void, not merely voidable. *See Rexnord Holdings, Inc. v.*
27 *Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994) (citing *48th St. Steakhouse, Inc.*
28 *v. Rockefeller Grp., Inc (In re 48th St. Steakhouse, Inc.)*, 835 F.2d 427, 431
(2d Cir. 1987)); *Hillis Motors, Inc v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d
581, 586 (9th Cir. 1993). The Bankruptcy Appellate Panel for the Ninth
Circuit recently held that a creditor's continuation of a state court fraudulent
conveyance action against non-debtor entities was a violation of the
automatic stay, even though the debtor was separated out from the action.
Koeberer v. California Bank of Commerce et al. (In re Koeberer), BAP No.
NC-21-1078-FBS, Bk. No. 20-110514, 2021 WL 5371142 at *5-6 (B.A.P.
9th Cir. Nov. 18, 2021) (citing *FDIC v. Hirsch (In re Colonial Realty Co.)*,
980 F.2d 125 (2d Cir. 1992)). This Court takes judicial notice of the docket
in the LVLP Bankruptcy and notes that there is no order granting relief from
stay to allow the Collection Litigation to proceed. In light of this fact, and in
light of *In re Koeberer*, this Court cannot find, based on the current record,
that the Nevada Judgment is a valid and enforceable judgment entitled to
collateral estoppel effect.[...]

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1 The Trustee has ratified the prosecution of the adversary proceeding against
2 Liberman. See Declaration of Shelley Krohn filed in the Liberman New York adversary
3 proceeding, a copy of which is attached as Exhibit "F".

4 The Trustee and Nype assert that the prosecution of the fraudulent transfer claims
5 and the alter ego claims by the Trustee in the State Court Litigation did not violate the
6 automatic stay in the LVLP case.²

7 As of now, the other defendants in the State Court Litigation have not raised this
8 issue as a defense to the Judgment.

9 This Motion seeks an order annulling the automatic stay in this bankruptcy case, to
10 eliminate the question of the validity and preclusive effect of the Judgment but not the
11 other issues pending in the NY Bankruptcy Court.

12 **MEMORANDUM OF LAW**

13 **A. RULES FOR ANNULING THE AUTOMATIC STAY**

14 11 U.S.C. §362(d) provides for annulling the automatic stay as well as terminating
15 the automatic stay. The party seeking annulment must show "cause".³ Section 362(d)
16

17
18 ² The automatic stay does not apply to actions by a debtor or trustee in an offensive
19 posture. *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th
20 Cir.1989); *In re United States Abatement Corp.*, 157 B.R. 278, 279 (E.D.La.1993), *aff'd*, 39 F.3d
563 (5th Cir.1994); *Carley Cap. Grp. v. Fireman's Fund Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir.
1989).

21 "[T]he automatic stay provision of Section 362 'by its terms only stays
22 proceedings against the debtor,' and 'does not address actions brought by the
23 debtor which would inure to the benefit of the bankruptcy estate.' " *In re Fin.*
News Network Inc., 158 B.R. 570, 572 (S.D.N.Y. 1993) (quoting *Carley Capital*
Grp. v. Fireman's Fund Ins. Co., 889 F.2d 1126, 1127 (D.C. Cir. 1989)
24 (per curiam) (quoting *Ass'n of St. Croix Condominium Owners v. St. Croix Hotel*
Corp., 682 F.2d 446, 448 (3d Cir. 1982))) (emphasis in *St. Croix*).

25 *Tenas-Reynard v. Palermo Taxi Inc.*, No. 14 CIV. 6974 (PGG), 2016 WL 1276451, at *7
26 (S.D.N.Y. Mar. 30, 2016).

27 ³ Bankruptcy Code 362(d)(1) provides:

28 (d) On request of a party in interest and after notice and hearing, the court shall
grant relief from the stay provided under subsection (a) of this section, such as by
terminating, *annulling*, modifying, or conditioning such stay—

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1 expressly authorizes a bankruptcy court to annul the automatic stay in a bankruptcy case.
2 “Bankruptcy courts have the power to annul an automatic stay retroactively for cause
3 pursuant to 11 U.S.C. § 362(d)(1) in order to rehabilitate stay violations.” *Bunch v.*
4 *Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 329 F.3d 948, 951–52 (8th Cir.2003).
5 See also, *In re Schwartz*, 954 F.2d 569, 573 (9th Cir. 1992) (“If a creditor obtains
6 retroactive relief under section 362(d), there is no violation of the automatic stay”)

7 In deciding whether it should grant such relief, the Court looks at the circumstances
8 of the case and balances the equities of the parties’ respective positions. *In re Nat’l Envtl.*
9 *Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997); *In re Fjeldsted*, 293 B.R. 12, 24 (9th
10 Cir. BAP 2003).

11 Several factors have been identified by Courts when determining
12 whether circumstances are sufficiently compelling to warrant retroactive
13 annulment of the stay. Such factors include (1) whether the creditor had
14 actual or constructive knowledge of the bankruptcy filing, (2) whether the
15 debtor acted in bad faith, (3) whether grounds would have existed for
16 modification of the stay if a motion had been filed before the violation, (4)
whether the denial of retroactive relief would result in unnecessary expense
to the creditor, and (5) whether the creditor has detrimentally changed its
position on the basis of the action taken. *Id.* at 281.

17 *In re Barr*, 318 B.R. 592, 598 (Bankr. M.D. Fla. 2004). In *In re Schumann*, 546 B.R. 223,
18 228 (Bankr. D.N.M. 2016), the Court listed the factors as follows:

- 19 1. Whether the creditor had actual or constructive knowledge of the debtor's
20 bankruptcy filing when it acted in violation of the automatic stay.
- 21 2. Whether the debtor filed the bankruptcy case in bad faith or otherwise acted
22 in bad faith.
- 23 3. Whether grounds for relief from the stay existed and a motion, if filed, would
24 likely have been granted prior to the automatic stay violation.
- 25 4. How quickly the creditor sought annulment of the automatic stay upon
26 learning of the debtor's bankruptcy filing.
- 27 5. Whether the creditor continued to violate the stay after learning of the
28 debtor's bankruptcy filing.
6. Whether the debtor remained ‘stealthily silent’ in the face of the creditor's

(1) *for cause*, including the lack of adequate protection of an interest in
property of such party in interest;

1 unknowing violation of the automatic stay.

2 In *In re Lett*, 238 B.R. 167, 195 (Bankr.W.D.Mo.1999), and *In re Stockwell*, 262
3 B.R. 275, 281 (Bankr.D.Vt.2001), the bankruptcy judges also considered “if failure to
4 grant retroactive relief would cause unnecessary expense to the creditor” and “if the
5 creditor has detrimentally changed its position on the basis of the action taken.”

6 The Bankruptcy Appellate Panel for the Ninth Circuit stated:

7 We conclude that a determination of whether or not to annul the automatic
8 stay and thereby grant retroactive relief requires the court to balance the
9 equities.

10 *In re Fjeldsted*, 293 B.R. 12, 15 (B.A.P. 9th Cir. 2003).

11 The most important analysis this Court should make is two-fold:

- 12 (1) Whether the Court would have lifted the automatic stay if that had been
13 requested before the trial in the State Court Litigation; and
14 (2) Taking into consideration all of the circumstances, would annulling the stay
15 be equitable.

16 **B. EFFECT OF ANNULING THE AUTOMATIC STAY**

17 When the automatic stay is annulled it works retroactively to the date of a debtor’s
18 petition. *See Franklin Sav. Assn’v. Office of Thrift Supervision*, 31 F.3d 1020, 1023 (10th
19 Cir.1994) (acknowledging that “bankruptcy courts have the authority to ‘annul’ a stay”)
20 (citing 11 U.S.C. § 362(d)); *Albany Partners, Ltd. v. Westbrook (In re Albany Partners,*
21 *Ltd.)*, 749 F.2d 670, 675 (11th Cir.1984) (“The word ‘annulling’ in ... [§ 362(d)] evidently
22 contemplates the power of bankruptcy courts to grant relief from the stay which has
23 retroactive effect ...”). Annulment of the automatic stay retroactively validates post-
24 petition actions taken in violation of the automatic stay. *See In re Schwartz*, 954 F.2d 569,
25 573 (9th Cir.1992) (reasoning that “[i]f a creditor obtains retroactive relief under section
26 362(d), there is no violation of the automatic stay”); *In re Am. Spectrum Realty, Inc.*, 540
27 B.R. 730, 743 (Bankr. C.D. Cal. 2015) (“Section 362(d) provides authorization to annul
28 the automatic stay, which, in effect, retroactively ratifies or validates acts that otherwise

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1 violated the stay.”); *In re Boni*, 240 B.R. 381, 384 (B.A.P. 9th Cir. 1999) (“By annulling
2 the automatic stay, the bankruptcy court may validate an act that would otherwise be void
3 as a violation of the automatic stay.”).

4 In this case, Duwaik seeks the annulment of the automatic stay
5 retroactively. The Eleventh Circuit Court of Appeals has explained the
6 distinction between annulling the stay retroactively, as requested by Duwaik,
7 and modifying the stay prospectively to permit a creditor to take an action in
8 the future.

9 It is true that acts taken in violation of the automatic stay are generally
10 deemed void and without effect. [Citations omitted]. Nonetheless, § 362(d)
11 expressly grants bankruptcy courts the option, in fashioning appropriate
12 relief, of “annulling” the automatic stay, in addition to merely “terminating”
13 it. The word “annulling” in this provision evidently contemplates the power
14 of bankruptcy courts to grant relief from the stay which has retroactive
15 effect; otherwise its inclusion, next to “terminating,” would be superfluous.

16

17 Accordingly, we hold that § 362(d) permits bankruptcy courts, in
18 appropriately limited circumstances, to grant retroactive relief from the
19 automatic stay.

20 *In re Albany Partners, Ltd.*, 749 F.2d 670, 675 (11th Cir.1984).

21 Consequently, § 362(d) authorizes the annulment of the stay nunc pro tunc to
22 the date of the petition, provided that the circumstances of the particular case
23 warrant such relief. “Bankruptcy courts have the power to annul an
24 automatic stay retroactively for cause pursuant to 11 U.S.C. § 362(d)(1) in
25 order to rehabilitate stay violations.” *In re Webb*, 294 B.R. 850, 853
26 (Bankr.E.D.Ark.2003)(quoting *In re Hoffinger Indus.*, 329 F.3d 948, 951–52
27 (8th Cir.2003)).

28 *In re Barr*, 318 B.R. 592, 597–98 (Bankr. M.D. Fla. 2004).

In *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 589
U.S. —, 140 S. Ct. 696, 206 L. Ed. 2d 1 (2020) (“Acevedo”), the United States Supreme
Court limited a federal court’s inherent authority to issue *nunc pro tunc* orders. This
decision does not limit a federal court from exercising statutorily granted authority to issue
orders which have retroactive effect.

In this Circuit the rule was stated by a BAP Panel:

The Supreme Court's *Acevedo* opinion does not preclude retroactive relief from stay.

During the pendency of this appeal, the Supreme Court
decided *Acevedo*, 140 S. Ct. 696, in which it held that a United States
District Court's nunc pro tunc order remanding a removed lawsuit to state

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1 court was not effective to retroactively confer jurisdiction so as to validate
2 the state court's orders entered before remand. *See id.* at 699-701.⁹ At least
3 one bankruptcy court has interpreted *Acevedo* as prohibiting a grant of
retroactive or nunc pro tunc relief from stay. *In re Telles*, No. 8-20-70325-
reg, 2020 WL 2121254 (Bankr. E.D.N.Y. Apr. 30, 2020).

4 **We do not believe that the ruling in *Acevedo* prohibits a**
5 **bankruptcy court's exercise of the power to grant retroactive relief from**
6 **stay.** But this court should always carefully consider the scope and reach of
7 Supreme Court opinions; and in light of our disagreement with *Telles*—
that *Acevedo* is directly relevant to requests to terminate or annul the stay
retroactively—we consider the issue here and at some length.

8 *In re Merriman*, 616 B.R. 381, 391–92 (B.A.P. 9th Cir. 2020) (emphasis added), *appeal*
9 *dismissed*, No. 20-60036, 2021 WL 3610895 (9th Cir. Feb. 26, 2021). This rule has been
10 followed by this Court. *In re Sorelle*, No. BK-S-19-17870-MKN, 2020 WL 8551788, at
11 *8 (Bankr. D. Nev. Dec. 2, 2020) and other bankruptcy courts. *See In re Miller*, 620 B.R.
12 637, 641 (Bankr. E.D. Cal. 2020); *In re Wellington*, No. 20-10080, 2021 WL 1963933
13 (Bankr. M.D.N.C. Mar. 9, 2021) (following and quoting *Merriman* and *Miller*); *In re*
14 *Grinding Specialists, LLC*, 625 B.R. 6, 14 (Bankr. D.S.C. 2021) (quoting *Miller*). See also
15 *In re SS Body Armor I, Inc.*, No. 10-11255(CSS), 2021 WL 2315177, at *3 (Bankr. D. Del.
16 June 7, 2021) (“The *Acevedo* case prohibits courts from using *nunc pro tunc* orders to cure
17 jurisdictional defects arising under 28 U.S.C. § 1445(d), which governs nonremovable
18 actions. *Acevedo* does not prohibit courts from entering *nunc pro tunc* orders where there
19 are no jurisdictional defects.”).

20 Movants are aware that Judge Grossman (the presiding judge in the Liberman
21 Bankruptcy Case) has taken the opposite position in the *Telles* case referenced by the
22 *Merriman* Court. Judge Grossman has held:

23 The landscape of the law is different post-*Acevedo*, and this Court is bound
24 to follow the precedent set by the Supreme Court. The Supreme Court has
25 clarified that *nunc pro tunc* relief cannot be used to confer jurisdiction where
26 none existed. *Acevedo*, 140 S.Ct. at 700-01. Once a debtor files for
27 bankruptcy, the state court is divested of jurisdiction over property of the
28 estate, and any action taken by the state court with respect to the debtor's
property is void.

1 *In re Telles*, No. 8-20-70325-REG, 2020 WL 2121254, at *4 (Bankr. E.D.N.Y. Apr. 30,
2 2020).

3 Notwithstanding the decision in *Telles*, this Court should respectfully follow the
4 precedent of the 9th Circuit B.A.P. in *Merriman* and by this Court in *Sorelle*.

5 **C. RULES FOR LIFTING STAY FOR PENDING LITIGATION**

6 11 U.S.C. § 362 pertains to the lifting of the automatic stay and provides that a
7 Court may grant the request of a moving party to modify the automatic stay for cause. *See*
8 11 U.S.C. § 362(d)(1). Although the Bankruptcy Code does not define “cause,” courts in
9 the Ninth Circuit have granted relief from stay under § 362(d)(1) when necessary to permit
10 pending litigation to be concluded in another forum if the nonbankruptcy suit involves
11 multiple parties or is ready for trial. *See In re John Smith (In re Smith)*, 389 B.R. 902, 917-
12 18 (D.Nev. 2008) (citing *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*,
13 912 F.2d 1162, 1166 (9th Cir. 1990)):

14 Stay relief shall be granted upon a showing of “cause,” which “has no clear
15 definition and is determined on a case-by-case basis.” *Benedor Corp. v.*
16 *Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346, 352 (9th
17 Cir.1996), quoting *Christensen v. Tucson Estates, Inc. (In re Tucson Estates,*
18 *Inc.)*, 912 F.2d 1162, 1166 (9th Cir.1990). The decision whether to grant or
19 deny relief from the automatic stay “is committed to the sound discretion of
20 the bankruptcy court.” *Conejo*, 96 F.3d at 351.
21 Especially when litigation in a nonbankruptcy court is ready for trial or has
22 already been tried and is ready for judgment, it is not uncommon for
23 bankruptcy courts to find cause to lift the automatic stay, at least to permit
24 entry of judgment to liquidate the amount of a claim asserted against a
25 debtor.

26 *In re Patel*, 291 B.R. 169, 172 (Bankr. D. Ariz. 2003). *See In re Plumberex Specialty*
27 *Products, Inc.*, 311 B.R. 551, 556–57 (Bankr.C.D.Cal.2004) (“Courts in the Ninth Circuit
28 have granted relief from the stay under § 362(d)(1) when necessary to permit pending
litigation to be concluded in another forum if the non-bankruptcy suit involves multiple
parties or is ready for trial.”) (citations omitted); *In re Am. Spectrum Realty, Inc.*, 540 B.R.
730 (Bankr. C.D. Cal. 2015) (“cause” existed to lift automatic stay to allow state court

1 litigation that had been pending against Chapter 11 debtor for more than two years to
2 proceed before court that was very familiar with issues and parties).

3 The burden of proof on a motion to modify the automatic stay is a shifting one. *See*
4 *In re Smith*, 389 B.R. at 918 (citations omitted). Once the moving party establishes a
5 prima facie case that “cause” exists, the burden shifts to the debtor to show that relief from
6 the stay is unwarranted. *See id.* Courts have identified various factors relevant to
7 determining whether the stay should be lifted to allow a creditor to continue pending
8 litigation in a non-bankruptcy forum. In particular, most courts analyze twelve
9 nonexclusive factors as issues a bankruptcy court should weigh in determining whether to
10 lift the stay. *See In re Smith*, 389 B.R. at 918-9; *see In re Curtis*, 40 B.R. 795, 799-800
11 (Bankr.D. Utah 1984); *see Sonnax Indus., Inc. v. Tri Component Prods. Corp (In re*
12 *Sonnax Indus., Inc.)*, 907 F.2d 1280, 1285 (2d Cir. 1990). These factors (the
13 “*Sonnax/Curtis* factors”) are as follows:

- 14 (1) Whether the relief will result in a partial or complete resolution of the
15 issues;
- 16 (2) The lack of any connection with or interference with the bankruptcy
17 case;
- 18 (3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 19 (4) Whether a specialized tribunal has been established to hear the
20 particular cause of action and whether that tribunal has the expertise
21 to hear such cases;
- 22 (5) Whether the debtor’s insurance carrier has assumed full financial
23 responsibility for defending the litigation;
- 24 (6) Whether the action essentially involves third parties, and the debtor
25 functions only as a bailee or conduit for the goods or proceeds in
26 question;
- 27 (7) Whether the litigation in another forum would prejudice the interests
28 of other creditors, the creditors committee and other interested parties;
- (8) Whether the judgment claim arising from the foreign action is subject
to equitable subordination under Section 5109(c);
- (9) Whether movant’s success in the foreign proceeding would result in a
judicial lien avoidable by the debtor under Section 522(f);
- (10) The interest of judicial economy and the expeditious and economical
determination of litigation for the parties;

- 1 (11) Whether the foreign proceedings have progressed to the point where
2 the parties are prepared for trial; and
3 (12) The impact of the stay on the parties and the “balance of hurt.”

4 *See In re Smith*, 389 B.R. at 918-19.

5 **ARGUMENT**

6 **A. THE STAY SHOULD BE ANNULLED TO VALIDATE THE STATE**
7 **COURT JUDGMENT AFTER TRIAL ON THE MERITS**

8 Nype and the Trustee are asking this Court to annul the stay to eliminate any
9 question that the Judgment issued in the State Court Litigation was valid against the Co-
10 Defendants, including Liberman. Except to the extent that the causes of actions alleged
11 belong to the LVLP bankruptcy estate, there was no bankruptcy stay of the action against
12 Liberman and the Co-Defendants because they are not debtors and the automatic stay does
13 not protect non-debtor co-defendants.⁴

14 It was and still is the position of the Movants that there was no automatic stay of the
15 action for fraudulent transfers and alter ego because those claims were brought by Trustee
16 Krohn on behalf of the LVLP Bankruptcy Estate. Generally, the automatic stay enjoins
17 actions against a debtor or debtor’s property interests but not actions for the benefit of the
18 bankruptcy estate.

19 The application of the facts of this case to the *Barr/Schuman* factors is as follows:

- 20 1. **Whether the creditor had actual or constructive knowledge of the**
21 **debtor's bankruptcy filing when it acted in violation of the**
22 **automatic stay.** Trustee Krohn and Nype were aware of the LVLP
23

24 ⁴ “[T]he automatic stay is not available to non-bankrupt co-defendants of a debtor even if they are
25 in a similar legal or factual nexus with the debtor.” *Maritime Elec. Co. v. United Jersey Bank*, 959
26 F.2d 1194, 1205 (3d Cir.1991). *See also, e.g., Teachers Ins. & Annuity Ass’n v. Butler*, 803 F.2d
27 61, 65 (2d Cir.1986) (“It is well-established that stays pursuant to § 362(a) are limited to debtors
28 and do not encompass non-bankrupt co-defendants.”); *Marcus, Stowell & Beye Government Securities, Inc. v. Jefferson Investment Corp.*, 797 F.2d 227, 230 n. 4 (5th Cir.1986) (“The well established rule is that an automatic stay of judicial proceedings against one defendant does not apply to proceedings against co-defendants.”).

Bankruptcy Case but believe that all parties to the action proceeded as if the stay did not apply.

2. **Whether the debtor filed the bankruptcy case in bad faith or otherwise acted in bad faith.** The LVLP Bankruptcy Case was filed on the eve of trial in the State Court causing a further delay until Trustee Krohn could employ counsel and intervene. Filing to avoid trial is an indicator of “bad faith”.
3. **Whether grounds for relief from the stay existed and a motion, if filed, would likely have been granted prior to the automatic stay violation.** The grounds for lifting the automatic stay existed at the time this court authorized the employment of Special Counsel to prosecute the LVLP Bankruptcy Estate’s claims and since seemingly none of the parties proceeded as if the stay applied, Movants believe the stay would like have been granted if a motion had been made.
4. **How quickly the creditor sought annulment of the automatic stay upon learning of the debtor's bankruptcy filing.** Trustee Krohn and Nype did not immediately seek relief from the stay because all parties were seemingly under the impression that prosecution of the LVLP Bankruptcy Estate’s claims by the Trustee did not require the automatic stay to be lifted.
5. **Whether the creditor continued to violate the stay after learning of the debtor's bankruptcy filing.** Because neither the plaintiffs nor the defendants in the State Court Litigation believed that the automatic stay enjoined the Trustee’s prosecution of claims belonging to the LVLP Bankruptcy Estate, no relief from stay was sought prior to the current motion.
6. **Whether the debtor remained ‘stealthily silent’ in the face of the creditor's unknowing violation of the automatic stay.** Neither

1 Liberman nor the Co-Defendants raised the automatic stay in the State
2 Court Litigation or in the pending NY Bankruptcy Case. The issue
3 was raised by Judge Grossman.

4 The application of the facts of this case to the *Sonnax/Curtis* factors is as follows:

- 5 1. **Whether the relief will result in a partial or complete resolution of**
6 **the issues:** This Motion seeks relief concerning one issue: whether the
7 automatic stay in the LVLP Bankruptcy Case (not in the Liberman
8 Bankruptcy Case) enjoined the prosecution of the claims by the
9 Trustee and Nype in the State Court Litigation. The annulment of the
10 stay will make the State Court's Judgment a valid and preclusive
11 judgment. **This factor favors annulling the stay.**
- 12 2. **The lack of any connection with or interference with the**
13 **bankruptcy case:** The annulment of the stay will allow the
14 determination of the dischargeability of the Judgment in the Liberman
15 Bankruptcy Case without a new trial. It will have no affect on the
16 administration of the LVLP Bankruptcy Case (except to make the
17 judgment in favor of the LVLP Bankruptcy estate against Liberman
18 more likely to be determined to be non-dischargeable). The annulment
19 of the stay will promote the administration of this bankruptcy estate.
20 **This factor favors annulling the stay.**
- 21 3. **Whether the foreign proceeding involves the debtor as a**
22 **fiduciary:** Not applicable. **This factor is neutral.**
- 23 4. **Whether a specialized tribunal has been established to hear the**
24 **particular cause of action and whether that tribunal has the**
25 **expertise to hear such cases:** The State Court business court was
26 created to hear business cases. It has already tried the case. **This**
27 **factor favors annulling the stay.**
- 28 5. **Whether the debtor's insurance carrier has assumed full financial**

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responsibility for defending the litigation: No. This factor does not favor annulling the stay.

6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question: No. The State Court Litigation obtained awards against non-debtor Co-Defendants as well as against Liberman. This factor favors annulling the stay.

7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors committee and other interested parties: No. The State Court Litigation to recover fraudulent transfers of the debtor's property will benefit the estate. This factor favors annulling the stay.

8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c): No. Equitable subordination is not involved in the State Court Litigation. This factor favors annulling the stay.

9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f): No. This factor favors annulling the stay.

10. The interest of judicial economy and the expeditious and economical determination of litigation for the parties: Yes. Two years ago, the State Court, after 3 years, tried the case over several days. The State Court had jurisdiction over all of the defendants and the subject matter of the litigation. This factor favors annulling the stay.

11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial: Yes. The matter was set for trial just when LVLP filed its bankruptcy petition (to delay the

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State Court trial). The State Court, with the Trustee as a co-plaintiff, conducted the multi-day trial two years ago. **This factor favors annulling the stay.**

12. **The impact of the stay on the parties and the “balance of hurt”:**
Since the issues have already been litigated, all parties benefit from annulling the stay to avoid the time and expense of a retrial. **This factor favors annulling the stay.**

Based on these factors, this Court should annul the stay to allow the Judgment to be a valid final judgment in favor of Nype and the Trustee to (a) to be used in the Liberman Bankruptcy Case and (b) to be used to collect awarded damages and property from the Co-Defendants.

WHEREFORE, the Russell Nype and Revenue Plus, LLC and the Trustee respectfully request that this Court enter an order:

1. Annuling the automatic stay to eliminate any question concerning the validity of the Judgment entered in the State Court Litigation (a) to be used in the Liberman Bankruptcy Case and (b) to be used to collect awarded damages and property from the Co-Defendants; and (c) to allow the pending appeals of the Judgment issued by the State Court.

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2. For such further relief as this Court deems just and proper.

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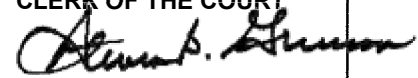
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EXHIBIT A

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11/12/2019 5:00 PM
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CLERK OF THE COURT



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11 *In Intervention Shelley D. Krohn*

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 RUSSELL L. NYPE AND REVENUS PLUS,
15 LLC

16 Plaintiffs,

17 vs.

18 DAVID J. MITCHELL; BARNET LIBERMAN; LAS
19 VEGAS LAND PARTNERS, LLC; MEYER
20 PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
21 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,
22 LLC; LIVE WORK MANAGER, LLC; AQUARIUS
23 OWNER, LLC; LVLV HOLDINGS, LLC;
24 MITCHELL HOLDINGS, LLC; LIBERMAN
25 HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE
26 WORKS TIC SUCCESSOR, LLC; CASINO
27 COOLIDGE LLC; DOES I through III, and ROE
28 CORPORATIONS I through III, inclusive,

29 Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

**SHELLEY D. KROHN, BANKRUPTCY
TRUSTEE'S MOTION TO INTERVENE**

DATE:

TIME:

30 COMES NOW, SHELLEY D. KROHN, Proposed Plaintiff-in-Intervention (hereinafter
31 "Plaintiff"), by and through the undersigned counsel, who hereby respectfully submits her Motion
32 to Intervene in this matter. This Motion is supported by the following Memorandum of Points
33

34

1 and Authorities, the exhibits attached hereto, the Court's file herein, and any evidence adduced at
2 the hearing to be held by the Court.

3 DATED this 12th day of November, 2019

4 JOHN W. MUIJE & ASSOCIATES

5
6
7 By: 

8 JOHN W. MUIJE, ESQ.

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1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I.**

4 **INTRODUCTION**

5 Shelley D. Krohn (hereinafter “Krohn”) brings this Motion seeking to Intervene in this
6 matter pursuant to NRCP 24(a) as Krohn, has an interest in the subject matter of this action and
7 the disposition of this action affects Trustee’s ability to recover, on behalf of the Bankruptcy of
8 Las Vegas Land Partners, LLC, BK-S-19-15333-MKN, the funds which the original Plaintiff
9 herein has sought to recover with regard to the alleged fraudulent conveyances involving the
10 various named Defendants herein.
11

12 Krohn is familiar with the claims asserted in this litigation and has consulted with counsel
13 for the original Plaintiff. Krohn has obtained Bankruptcy Court approval to employ John W.
14 Muije, Esq., attorney as Special Counsel for the purpose of pursuing the claims asserted herein,
15 *inter alia*, from the various defendants already named. See Exhibit “1.” Under applicable
16 Bankruptcy law, the Bankruptcy Trustee has two years from the date that a Bankruptcy Petition is
17 filed, and a Trustee appointed, to assert and seek claims such as those already pending before this
18 Court. The Trustee respectfully represents that such is exactly what she wants to do, and that the
19 appropriate forum for the same, in the exercise of the Trustee’s sound business judgment, is the
20 already pending matter before this Honorable Court.
21

22 **II.**

23 **ARGUMENT AND AUTHORITIES**

24
25
26 Shelley D. Krohn seeks the permission of this Court to intervene in this matter pursuant to
27 NRS 12.130, which provides that before trial, “any person may intervene in an action or
28 proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or
an interest

1
2 against both.” The intervention is to be made as provided for in the Nevada Rules of Civil
3 Procedure. *Id.* NRCP 24(a) provides that:

4
5 Upon timely application anyone shall be permitted to intervene
6 in an action: (1) when a statute confers an unconditional right
7 to intervene; or (2) when the application claims an interest
8 related to the property or transaction which is the subject of
9 the action and the applicant is so situated that the disposition
10 of the action may as a practical matter impair or impede the
11 applicant’s ability to protect that interest.

12 As there is no statute applicable in this matter that provides Shelley D. Krohn, an
13 unconditional right to intervene, Shelley D. Krohn’s application is governed by NRCP 24(a)(2),
14 and allows a party to intervene if it meets the following four requirements: (1) that she have
15 sufficient interest in the subject matter of the litigation, (2) that her ability to protect that interest
16 may be impaired if she does not intervene; (3) that her interest is not adequately represented by
17 existing parties, and (4) that is application is timely. American Home Assurance Company v.
18 Eighth Judicial District Court, 122 Nev. 1229, 147 P.3d 1120, 1127 (2006).

19 The timeliness of an applicant’s motion to intervene is “a determination that lies within
20 the sound discretion of the trial court.” Lawler v. Ginocchio, 94 Nev. 623, 626, 584 P.2d 667
21 (1978) quoting Cleland v. Eighth Judicial District Court, 92 Nev. 454, 456. 552 P.2d 488 (1976).

22 The timeliness requirement “must have accommodating flexibility toward both the court and the
23 litigants if it is to be successfully employed to regulate intervention in the interest of justice.” *Id.*

24 A copy of Shelley D. Krohn’s proposed Complaint In Intervention is attached hereto as Exhibit
25 “2”.

26 The fraudulent transfer claims previously brought by the Plaintiff as creditors likely
27 became property of the Bankruptcy Estate of LVLV, and the Trustee, as representative of that
28

1 Bankruptcy Estate of LVLV pursuant to Bankruptcy Code Section 323(a), has the authority to
2 bring such actions.

3 11 U.S.C. Section 544 provides in part:

- 4
5 (a) The Trustee shall have, as of the commencement
6 of the case, and without regard to any knowledge of
7 the trustee or of any creditor, the rights and powers
8 of, or may avoid any transfer of property of the
9 debtor or any obligation incurred by the debtor.

10 Here, Shelley D. Krohn's application to intervene in this action meets all four
11 requirements of NRCV 24(a)(2). Shelley D. Krohn has a sufficient interest in the subject matter
12 of this litigation. Trustee has conducted reasonable discovery in the context of the Las Vegas
13 Land Partners, LLC's bankruptcy proceeding, and is reasonably persuaded that meritorious
14 claims exist against the various named defendants herein, to recoup and recover valuable assets
15 that once belonged beneficially to the Debtor, Las Vegas Land Partners, LLC.

16 It is true that the Trustee could elect to start over from scratch and could independently
17 invoke the jurisdiction before the State Court or before the Bankruptcy Court. Nevertheless,
18 where and how to pursue the recovery of the claims asserted is unequivocally within the business
19 judgment of a Bankruptcy Trustee, and the Trustee has elected to intervene in this case, with
20 multiple defendants already active and present, as opposed to starting over from scratch.

21 Because of the overlapping claims, it is judicially economic to bring all the claims to trial
22 at the same time. Having to literally reinvent the wheel would be inefficient, detrimental to
23 judicial economy, and might very well impair the efficacy of the Trustee's attempt to recover the
24 subject property for the benefit of the Estate. Given the nature of the underlying common law
25 and state law claims, it is appropriate that the Trustee join with the existing Plaintiff, both of
26 whom have legitimate interests in the anticipated proceeds of this litigation, and further, that the
27 Trustee be present so as to protect the interests of the Bankruptcy Estate and the other creditors.
28

1 Finally, as noted hereinabove, Congress in its infinite wisdom has declared that a
2 Bankruptcy Trustee has two years to evaluate, investigate, and develop theories to recover assets
3 for the Bankruptcy Estate, and to initiate the pursuit of claims such as that sought in this
4 litigation. Accordingly, Las Vegas Land Partners, LLC's bankruptcy having commenced a less
5 than four months ago, the Trustee is well within the statutory time allowed.
6

7 **III.**

8 **CONCLUSION**

9 Therefore, Shelley D. Krohn respectfully requests that the Court grant her Motion to
10 Intervene and order that Shelley D. Krohn be allowed to file her Complaint-in-Intervention in this
11 matter, since Shelley D. Krohn's application meets the requirements of NRCP 24(a)(2), and she
12 should be heard in this matter.
13

14 DATED this 12th day of November, 2019

15 **JOHN W. MUIJE & ASSOCIATES**

16
17
18 By: 

19 **JOHN W. MUIJE, ESQ.**
20 Nevada Bar No. 2419
21 1840 East Sahara Avenue, #106
22 Las Vegas, Nevada 89104
23 Telephone: 702-386-7002
24 Facsimile: 702-386-9135
25 E-Mail: jmuje@mujelawoffice.com
26 *Attorneys for Proposed Plaintiff*
27 *In Intervention*
28

JOHN W. MUIJE & ASSOCIATES
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Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmuje@mujelawoffice.com

CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the
12TH day of November, 2019, I caused the foregoing document, **SHELLEY D. KROHN,**

BANKRUPTCY TRUSTEE'S MOTION TO INTERVENE, to be served as follows:

- ☐ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or
- ☒ by electronically filing and serving with the Clerk of the Court via the Odyssey E File and Serve System;
- ☐ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows:


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305 Las Vegas, LLC

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Attorneys for Mitchell Defendants


An Employee of JOHN W. MUIJE & ASSOCIATES

Exhibit “1”


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
October 31, 2019

SHELLEY D. KROHN
E-mail: Shelley@TrusteeKrohn.com
510 South 8th Street
Las Vegas, Nevada 89101
Telephone: (702) 421-2210
Facsimile: (702) 366-1939

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:)	CASE NO. BK-S-19-15333-MKN
)	CHAPTER 7
LAS VEGAS LAND PARTNERS, LLC)	
)	
)	Date: October 30, 2019
)	Time: 2:30 p.m.
)	
Debtor.)	

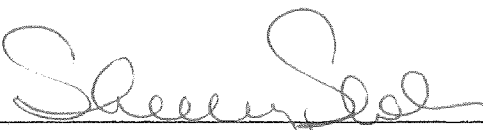
**ORDER GRANTING APPLICATION TO EMPLOY JOHN W. MUIJE & ASSOCIATES AS
SPECIAL COUNSEL ON A CONTINGENT FEE BASIS UNDER 11 U.S.C. §327(a)**

This matter having come on for hearing at the date and time set forth above and upon reading the Motion of Shelley D. Krohn, Trustee, to employ the law firm of JOHN W. MUIJE & ASSOCIATES as Special Counsel for the Estate pursuant to 11 U.S.C. §327 and §328; it appearing to the Court that neither the attorney, nor the firm, hold

1 or represent an interest adverse to the Estate, that the attorney is
2 a disinterested party within the meaning of §101(14) of the
3 Bankruptcy Code and may represent the Estate under 11 U.S.C. §327,
4 that the declaration of John Muije is sufficient, and that the
5 employment of special counsel is necessary and in the best interests
6 of the Estate and the creditors; the Court noting the appearances of
7 Shelley D. Krohn, Trustee, and Lenard E. Schwartz, Esq., bankruptcy
8 counsel for Russell Nype and Revenue Plus, LLC, and for good cause
9 appearing, it is hereby:
10

11 **ORDERED** that pursuant to §327 and §328 of the Bankruptcy Code,
12 the Trustee is authorized to employ the law firm of JOHN W. MUIJE &
13 ASSOCIATES as Special Counsel on a contingent fee basis in accordance
14 with the terms of the agreement set forth in the Motion and
15 Declaration in support for this Order. The payment of all fees and
16 costs are subject to further approval by this Court.

17 Respectfully submitted by:

18
19 
20 _____
21 **SHELLEY D. KROHN, TRUSTEE**
22
23
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28

CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

☒ The court has waived the requirement set forth in LR 9021(b) (1).

☐ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Counsel appearing:

☒ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order

IT IS SO ORDERED.

#

Exhibit “2”

COMP

JOHN W. MUIJE & ASSOCIATES

JOHN W. MUIJE, ESQ.

Nevada Bar No. 2419

1840 East Sahara Avenue, Suite 106

Las Vegas, Nevada 89104

Telephone: 702-386-7002

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Email: jmuije@muijelawoffice.com

Attorneys for Plaintiff-in-Intervention

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**RUSSELL L. NYPE AND REVENUS PLUS,
LLC**

CASE NO: A-16-740689-B

Plaintiffs,

DEPT. NO: XI

vs.

**[PROPOSED] COMPLAINT IN
INTERVENTION FOR:**

DAVID J. MITCHELL; BARNET LIBERMAN;
MEYER PROPERTY, LTD.; ZOE PROPERTY,
LLC; LEAH PROPERTY, LLC; WINK ONE, LLC;
LIVE WORK, LLC; LIVE WORK MANAGER,
LLC; AQUARIUS OWNER, LLC; LVLP
HOLDINGS, LLC; MITCHELL HOLDINGS, LLC;
305 LAS VEGAS, LLC; LIVE WORKS TIC
SUCCESSOR, LLC; CASINO COOLIDGE LLC;
DOES I through III, and ROE CORPORATIONS I
through III, inclusive,

- 1. CONSTRUCTIVE TRUST;**
- 2. FRAUDULENT CONVEYANCE;**
- 3. CONSPIRACY TO DEFRAUD;**
- 4. DECLARATORY RELIEF; AND**
- 5. ALTER EGO**

Mitchell Defendants.

**ARBITRATION EXEMPT
(EQUITABLE RELIEF)**

**SHELLEY D. KROHN, U.S. BANKRUPTCY
TRUSTEE**

Proposed Plaintiff-In-Intervention

COMES NOW, SHELLEY D. KROHN, U.S. Bankruptcy Trustee (hereinafter referred to as
"TRUSTEE"), and as and for causes of action against the Defendants, DAVID J. MITCHELL;
BARNET LIBERMAN; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC;

1 WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC;
2 LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC
3 SUCCESSOR, LLC; FC/LW VEGAS, LLC; CASINO COOLIDGE LLC, alleges and shows as follows:

4
5 **GENERAL FACTUAL ALLEGATIONS**

6 1. The Trustee was duly appointed to act as the Trustee in the Bankruptcy Case of
7 Las Vegas Land Partners, LLC, Case No. BK-19-15333-mkn (hereinafter referred to as
8 "TRUSTEE").

9 2. Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter
10 "NYPE"), a New York Limited Liability Company.

11 3. Defendant, DAVID J. MITCHELL (hereinafter "Mitchell), is an adult resident of
12 New York.

13 4. Defendant, BARNETT LIBERMAN (hereinafter "Liberman), is an adult resident
14 of New York.

15 5. Aquarius Owner, LLC is or was a Delaware limited liability company registered to
16 do business in the State of Nevada in November, 2004, and maintained its registration through
17 and including approximately November, 2009.

18 6. On information and belief, Aquarius Owner LLC was owned and directed by
19 Mitchell, Liberman, and/or LVLP.

20 7. In that context, various real property transfers and ownership equity took place
21 between LVLP and/or Aquarius Owner, LLC, during the operative time, and on information and
22 belief, financial distributions and transactions occurred between Aquarius Owner LLC, and its
23 principals on a recurring basis, most of which were never disclosed in publicly available records
24 or documents.
25
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1 8. FC/LW Vegas is or was a Delaware limited liability company registered to do
2 business in the State of Nevada in February 2011 which has maintained registration through the
3 present.
4

5 9. FC/LW, LLC, on information and belief, is an entity beneficially and jointly
6 owned and operated by Liberman, Mitchell, LVLP, LIVE WORK, LLC and non-party Forest City
7 Enterprises, for purposes of developing and managing various real property interest in Southern
8 Nevada.
9

10 10 In that context, various real property transfers and ownership equity took place
11 between LIVE WORK, LLC and/or FC/LW, LLC, during the operative time, and on information
12 and belief, financial distributions and transactions occurred between FC/LV Vegas, LLC, and its
13 principals on a recurring basis, most of which were never disclosed in publicly available records
14 or documents.
15

16 11. Leah Property, LLC is a Delaware limited liability that first registered to do
17 business in Southern Nevada in approximately February, 2005, and continued to be active and
18 operate in the Southern Nevada area through and including February, 2015.
19

20 13. On information and belief, Leah Property LLC is owned, managed, and operated
21 by Liberman, at all relevant times.
22

23 14. In that context, various real property transfers and ownership equity took place
24 between LVLP and/or Leah Property, LLC, during the operative time, and on information and
25 belief, financial distributions and transactions occurred between Leah Property, LLC and its
26
27
28

1 principals on a recurring basis, most of which were never disclosed in publicly available records
2 or documents..

3
4 15. Live Work LLC is a Delaware limited liability company who first became active in
5 Southern Nevada in or about April, 2005, and in fact was a plaintiff in the original underlying
6 lawsuit with LVLP versus the plaintiffs herein. Live Work, LLC, on information and belief,
7 continued to be active and operating in Southern Nevada through and including approximately
8 April, 2012.

9
10 16. On information and belief, Live Work, LLC was owned, operated, and managed by
11 Liberman, Mitchell, LVLP, Live Work Manager, LLC, and/or Mitchell Holdings, and was an
12 active.

13 17. In that context, various real property transfers and ownership equity took place
14 between LVLP and/or Live Work, LLC, during the operative time, and on information and belief,
15 financial distributions and transactions occurred between Live Work Manager, LLC and its
16 principals on a recurring basis, most of which were never disclosed in publicly available records
17 or documents.

18
19 18. Livework Manager, LLC was a Delaware Limited Liability that first registered to
20 do business in the State of Nevada in approximately April, 2005, and continued active and in
21 business in Southern Nevada through the present.

22
23 19. Livework Manager, LLC was owned, operated and managed by, on information
24 and belief, by Liberman, Mitchell, and/or LVLP.

25 20. In that context, various real property transfers and ownership equity took place
26 between LVLP and/or Live work Manger, LLC, during the operative time, and on information and
27
28

1
2 belief, financial distributions and transactions occurred between Livework Manager, LLC and its
3 principals on a recurring basis, most of which were never disclosed in publicly available records
4 or documents.

5 21. Zoe Property, LLC is a Delaware Limited Liability Company that first registered
6 and became active in Southern Nevada in or about November 2004, and in fact was one of the
7 original plaintiffs along with Live Work, LLC and LVLP versus the plaintiffs herein. On
8 information and belief, Zoe Property, LLC operated and continued to be active in Southern
9 Nevada through approximately November, 2007.

11 22. Zoe Property, LLC, was owned, operated and managed by, on information and
12 belief, by Liberman, Mitchell and/or LVLP.

13 23. In that context, various real property transfers and ownership equity took place \
14 \between LVLP and/or Zoe Property, LLC, during the operative time, and on information and
15 belief, financial distributions and transactions occurred between Zoe Property, LLC and its
16 principals on a recurring basis, most of which were never disclosed in publicly available records
17 or documents.

18 24. Wink One, LLC is a Delaware limited liability company that registered to do
19 business in the State of Nevada in approximately April, 2008, and remained active, according to
20 Secretary of State records, through and including approximately April, 2009. Wink One, LLC, on
21 information and belief, was owned, operated and managed by Liberman, Mitchell, and/or LVLP.

22 25,. Wink One, LLC was owned, operated and managed by, on information and belief,
23 by Liberman, Mitchell, and/or LVLP.

1
2 26. In that context, various real property transfers and ownership equity took place
3 between LVLP and/or Wink One, LLC, during the operative time, and on information and belief,
4 financial distributions and transactions occurred between Wink One, LLC and its principals on a
5 recurring basis, most of which were never disclosed in publicly available records or documents..

6
7 27. Casino Coolidge, LLC is a Delaware limited liability company that first registered
8 to do business in Southern Nevada in or about October, 2014.

9
10 28. On information and belief, Casino Coolidge, LLC is owned, operated and managed
11 by Liberman, Mitchell, and/or LVLP.

12
13 29. In that context, various real property transfers and ownership equity took place
14 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on information and
15 belief, financial distributions and transactions occurred between Casino Coolidge, LLC and its
16 principals on a recurring basis, most of which were never disclosed in publicly available records
17 or documents and continues to operate and be active in Southern Nevada through the present.

18
19 30. In that context, various real property transfers and ownership equity took place
20 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on information and
21 belief, financial distributions and transactions occurred between Casino Coolidge, LLC and its
22 principals on a recurring basis, most of which were never disclosed in publicly available records
23 or documents.

24
25 31. 305 Las Vegas, LLC is a Delaware limited liability company that first registered
26 and qualified to do business in Southern Nevada in approximately April, 2007, and remains active
27 and doing business in Southern Nevada through the present.
28

1 32. On information and belief, 305 Las Vegas, LLC was originally owned, operated
2 and managed by Liberman and/or LVLP.

3 33. In that context, various real property transfers and ownership equity took place
4 between LVLP, its affiliates and/or 305 Las Vegas, LLC, during the operative time, and on
5 information and belief, financial distributions and transactions occurred between 305 Las Vegas,
6 LLC, LVLP and its principals or affiliates on a recurring basis, most of which were never
7 disclosed in publicly available records or documents and continues to operate and be active in
8 Southern Nevada through the present.
9

10 34. In that context, various real property transfers and ownership equity took place
11 between LVLP and its affiliates and/or 305 Las Vegas, LLC, during the operative time, and on
12 information and belief, financial distributions and transactions occurred between 305 Las Vegas,
13 LLC, LVLP and its principals and affiliates on a recurring basis, most of which were never
14 disclosed in publicly available records or documents.
15

16 35. On information and belief, unbeknownst to Plaintiffs, in approximately 2012
17 305 Las Vegas, LLC engaged in an internal transaction resulting in the acquisition of the
18 beneficial interest of Mitchell by a Mr. Win Churchill, and a monetary distribution benefitting
19 Mitchell to the tune of \$7.5 million, all of which Plaintiff has only learned at very recent times.
20

21 36. On information and belief, MEYER PROPERTY, LTD., is fictitious entity that
22 was involved for a relatively short period of time with LEAH PROPERTY, LLC, and in the
23 context thereof participated in real estate transactions resulting in net financial gain to Leah and/or
24 Liberman, Mitchell, and/or LVLP, the specifics of which financial gains were never disclosed nor
25 reasonably discoverable by Plaintiffs herein.
26
27
28

1
2 37. In that context, various real property transfers took place between LVLP and/or
3 Meyer Property, LLC, during the operative time, and on information and belief, financial
4 distributions and transactions occurred between Meyer Property, LLC and its principals on a
5 recurring basis, most of which were never disclosed in publicly available records or documents
6 and continues to operate and be active in the State of Nevada through the present.

7
8 38. On information and belief, Mitchell Holdings, LLC is a Delaware limited liability
9 company that never qualified to do business within the State of Nevada, but was used by
10 Defendant Mitchell for purposes of owning Mitchell's equity or beneficial interest in various other
11 defendants, and fuddling money back and forth between such entities, in a matter that would not
12 be detectable or readily discoverable by Plaintiffs or other creditors.

13
14 39. In that context, various real property transfers and ownership equity took place
15 between LVLP and/or Mitchell Holdings, LLC during the operative time, and on information and
16 belief, financial distributions and transactions occurred between Mitchell Holdings, LLC and its
17 principals on a recurring basis, most of which were never disclosed in publicly available records
18 or documents, is a Delaware limited liability that first registered to do business in Nevada in
19 approximately February, 2011, and continues to operate and do business, in good standing,
20 through and including this date.

21
22 40. Live Works TIC Successor, LLC, on information and belief, is an entity in
23 which Liberman, Mitchell, and/or Las Vegas Land Holdings had substantial equity or beneficial
24 interest, and was the ultimate recipient of financial proceeds, monies, emoluments and benefits
25 deriving from Live Work TIC Successor LLC, and a tendency and common agreement entered
26 into between Live Work TIC Successor, LLC and non-party Forest City Enterprises, through
27
28

1
2 contractual and financial arrangements, referred to as the tenancy in common agreement, and
3 numerous subsequent amendments thereto.

4 41. In that context, various real property transfers and ownership equity took place
5 between LVLP and/or Live Works TIC Successor, LLC during the operative time, and on
6 information and belief, financial distributions and transactions occurred between Live Works TIC
7 Successor, LLC and its principals on a recurring basis, most of which were never disclosed in
8 publicly available records or documents..
9

10 42. Entity Defendants, MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
11 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC;
12 AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305
13 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LW VEGAS, LLC, are
14 believed to be Delaware limited liability companies and/or corporations which have conducted
15 business in the State of Nevada, and are alleged to be owned and/or controlled, in whole or in part
16 by Defendants, LAS VEGAS LAND PARTNERS, LLC, DAVID MITCHELL and BARNET
17 LIBERMAN.
18

19 43. LVLP, LLC, Mitchell, and Liberman, created the various Entity Defendants,
20 MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE,
21 LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP
22 HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC
23 SUCCESSOR, LLC; FC/LV VEGAS, LLC, on information and belief, and used multiple
24 sophisticated counsel for purposes of secreting, hiding, and conveying away valuable assets that
25 were available to satisfy creditors such as Plaintiffs as alleged more specifically hereinafter
26
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(hereinafter referred to as the "Asset Protection Scheme").

44 .That Plaintiffs do not at present know the true names and identities of those Entity Defendants, both corporate and individual, herein joined by fictitious names, but is informed and believes and therefore alleges that said Entity Defendants, are agents, employees, servants and representatives of the named Entity Defendants, or persons and entities acting in concert with the named Entity Defendants with respect to the premises herein plead, who are liable to the Plaintiffs by reason thereof, and the Plaintiffs pray leave to amend this Complaint to insert their true names and identities with appropriate allegations when the same becomes known.

45. Upon information and belief, part of the Asset Protection Scheme contemplated that the majority of the purported equity interests in the asset protection entities referred to in Paragraph 4 hereinabove be held in the name of LAS VEGAS LAND PARTNERS, LLC, or an associated entity, all of which were and are in reality controlled by DAVID J. MITCHELL and BARNET LIBERMAN.

46. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC received its equity interests in the asset protection entities gratuitously, or for wholly inadequate consideration.

47. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC is the nominal holder of the alleged interests, in the entity defendants, and takes its direction from DAVID J. MITCHELL and BARNET LIBERMAN, in managing and operation in the asset protection entities, which exist merely to help Entity Defendants, DAVID J. MITCHELL and BARNET LIBERMAN protect the original assets of LAS VEGAS LAND PARTNERS, LLC from creditors such as Plaintiffs.

1
2 48. Plaintiff is informed and believes, that the Entity Defendants are the recipients of
3 fraudulent transfers of real property, monies, and other valuable assets as hereinafter alleged.

4 49. Nype obtained a judgment against LVLP on or about April 10, 2015, and initiated
5 post-judgment collection and discovery efforts during the Summer of 2015.

6 50 The first post-judgment discovery documentation received by NYPE were various
7 tax returns and limited related information for LVLP, subsequently followed by various bank
8 statements and financial ledger documentation, spanning approximately late August, 2015 through
9 and including November 2015.
10

11 51. Most of the documentation so produced was already stale dated even when
12 produced, for example, the bank statements only being current through early 2014, SAID
13 documentation being produced in late 2015.
14

15 52. While the documentation produced in the latter half of 2015 disclosed some
16 suspicious circumstances and questionable transactions, it became clear that substantial additional
17 source document would be required to flesh out and understand precisely what had occurred.

18 53. Based on a preliminary review of the newly disclosed bank statements and ledgers,
19 it was noted that there was a comingling of funds related to various payments that appear to be
20 made on behalf of other entities. Although not all of the canceled checks were provided, the bank
21 statements of Las Vegas Land Partners, LLC located at Bates LVLP01-00001 to LVLP 08-00016
22 are indicative of usage by numerous related party entities. An example of the comingling can be
23 found at LVLP 07-00047, more specifically checks number 1287, 1288 and 1289 payable to the
24 Clark County Treasurer for parcels that do not appear to be recorded in the name of Las Vegas
25
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1
2 Land Partners, LLC and LVLP07-00048 more specifically checks number 1292 and 1293 payable
3 to Delaware Secretary of State to register other entities.

4 54. Documents provided labeled lvlp3a, a Las Vegas Land Partners, LLC document
5 consisting of a simple check register covering the period 1/13/11 to 4/27/15 also supports that
6 conclusion with the same date, payee and dollar amount information found on the checks.
7

8 58. A review of the full tax returns of LVLP Holdings, LLC provided at Bates
9 LVLP09-00001 to LVLP17-0064 Forms 1065 for calendar years 2005 to 2013 was first possible
10 in the late fall of 2015 as well. The tax returns are indicative of a combination and consolidation
11 of several related party Limited Liability Companies. The organizational documents located at
12 Bates LVLP18-00001 to LVLP19-00202 indicate that Las Vegas Land Partners, LLC is the single
13 equity member of Wink One, LLC and Livework Manager, LLC (who is the sole equity member
14 of Livework, LLC).

15 56. The members of Las Vegas Land Partners, LLC are Barnet Liberman and David
16 Mitchell (Bates LVLP19-00033-35).

17 57. There is no explanation for the usage of "LVLP Holdings, LLC" as the filing entity
18 for the tax returns. There are numerous real estate parcels, equity interests and sources of income
19 arising from the various consolidated entities listed on the tax returns of LVLP Holdings, LLC
20 that are not traceable to the ledgers provided by Las Vegas Land Partners, LLC.

21 58. Additionally there are numerous known sources of cash flow for example arising
22 from Wink One, LLC related to the RTC Lease that are not traceable to the accounting records.

23 59. During the Summer of 2016, NYPE again promulgated detailed specific written
24 discovery requests to LVLP, which requests were partially complied with in the form of additional
25 tax returns and ledger documentation, but mostly objected to.
26
27
28

1
2 60. NYPE found it necessary to file a Motion to Compel discovery, and an Order
3 resulting from many months of contested discovery disputes was finally entered by the Court on
4 or about February 2, 2017.

5 61. Some additional documentation was ultimately produced, after repeated efforts by
6 NYPE, which disclosed additional improprieties, misconduct, and transactions by LVLP and its
7 principals designed to effectively render LVLP insolvent and unable to respond in damages,
8 which transactions will be discussed, in part, hereinafter.

9 62. The Order Compelling Discovery of February 2, 2017 has only been partially
10 complied with, and there remain substantial deficiencies and blocks of documentation that could
11 and should have been produced, but have not been, at least as of the date of LVLP's bankruptcy
12 filing.

13 64. Even the documents produced from January through March, 2017, are inherently
14 contradictory and do not match the data reported on the tax returns.

15 64. As one key example, however, of the importance of having accurate and complete
16 source records, attached hereto as Exhibit "1" and by this reference incorporated herein is a
17 certification by LVLP's New Jersey CPA for the first time disclosing that various affiliated and
18 associated entities are disregarded for tax and accounting purposes, and are all reported through
19 LVLP Holdings, LLC's business tax return.

20 65. The partial and incomplete documentation produced between the Fall of 2015, and
21 into 2017, did show extensive co-mingling, a failure to keep separate and adequate accounting
22 records for various affiliates and associated companies, a decided lack of concrete detail, and an
23 absolute failure to account for and explain various cash flow entries.

24 66. Given the incomplete documentation produced by defendants, the Plaintiff is
25 unable to determine where LVLP's cash flow is coming from, or where the resulting cash flow is
26 being applied.

27
28

1
2 67. On information and belief, the documentation available shows that LVLP, its
3 affiliates and associated entities were shifting money between one entity and the other to pay bills
4 and cover expenses as needed, and not in any coherent or recurring logical form.

5 68. The data that has been provided does not match LVLP tax returns, for example
6 failing to disclose substantial income.

7 69. Part of the data provided appears to account for, in part, the financial transactions
8 and relationship between LVLP and its joint venture partner (the entity which Nype procured to
9 provide financing for LVLP's projects), Forest City Enterprises.

10 70. The data available to date appears to show that arrangements were made with
11 Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build equity,
12 resulting in an absence of actual cash receipt by LVLP.

13 71. Despite what those records are showing, however, the tax returns are wholly silent
14 and fail to disclose the accrual of any imputed income or equity with respect to the Forest City
15 Joint Ventures, despite the fact that the joint venture documents suggest that LVLP's share of
16 revenue is being used to pay down debt and build equity, which would legally result in the accrual
17 of taxable income which the law requires to be accurately reported

18 72. Indeed, until the preliminary information was received in the Fall of 2015 as
19 supplemented by the early 2017 production, LVLP, based on the tax returns and documentation it
20 had previously supplied, continued to operate, appeared to have assets, appeared to be paying
21 taxes as accrued, and continued to vigorously defend itself.

22 73. One particular item first disclosed in the late Winter of 2017 is a statement by the
23 acknowledged accountant for LVLP that numerous of the other defendant entities herein are
24 "disregarded for tax purposes", meaning, on information and belief, that their revenue and
25 expenses, as well as income and liabilities, while being nominally contained in a separate legal
26 entity, are a practical matter, and as recognized by Federal Taxing Authorities, one and the same
27 as LVLP. See Exhibit "1".
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2 74. Additional discovery information fleshed out in 2016 and early 2017 includes the
3 fact that LVLP has been effectively insolvent since 2015, despite showing millions of dollars of
4 network on its tax returns, and has been forced to pay its attorneys in both the prior litigation and
5 the present litigation through personal checks and credit cards of Mitchell and/or Liberman, or
6 through affiliate entities.

7 75. Much of the newly acquired financial data also disclosed that corporate filing fees
8 for numerous of the defendants herein had been paid, *ad hoc*, from LVLP bank accounts,
9 interchangeably, despite said entities nominally maintaining or claiming separate legal status.

10 76. Plaintiffs RUSSELL L. NYPE and the REVENUE PLUS, LLC (hereinafter
11 collectively referred to as "Nype") were Defendants in a case originally initiated by current
12 Defendants, LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC and ZOE
13 PROPERTIES, LLC in the Eighth Judicial District Court in Clark County, Nevada under Case
14 No. A551073, which case commenced on or about November 2, 2007 (hereinafter the "First
15 Case").

16 77 Nype counterclaimed in that case with regard to his prior business dealings with
17 LAS VEGAS LAND PARTNERS, LLC, its associate entities, and its principals, BARNET
18 LIBERMAN (hereinafter "Liberman") and DAVID J. MITCHELL (hereinafter "Mitchell"),
19 seeking compensation which he had been promised and which he had earned during the course of
20 the parties ongoing business dealings regarding the development of numerous Las Vegas real
21 estate holdings.

22 78. On information and belief, during the pendency of those proceedings, and after
23 defaulting on their obligations to Nype, Liberman and Mitchell undertook the process of creating
24 various affiliated and associate entities, including but not limited to several of the asset protection
25 entities as alleged in Paragraph 43 hereinabove, utilizing sophisticated corporate and asset
26 protection counsel.

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2 79. After years of protracted litigation, Nype ultimately obtained a judgment against
3 LAS VEGAS LAND PARTNERS, LLC on or about April 10, 2015 in the principal amount of
4 \$2,608,797.50.

5 80. As alleged hereinabove, upon information and belief, pursuant to the Asset
6 Protection Scheme, on various dates spanning 2007 through the present, Defendant LAS
7 VEGAS LAND PARTNERS, LLC commenced multiple real property and equity ownership
8 transfers to convey its valuable real property interests, to one or more the asset protection entities,
9 which asset protection entities continue to hold the subject real property or which have
10 subsequently transferred such to additional entities in which Liberman, Mitchell, and or LVLV
11 hold substantial beneficial interests.

12 81. In addition to the numerous real property conveyances alleged hereinabove, and
13 totally unbeknownst to Nype at the time LAS VEGAS LAND PARTNERS, LLC transferred
14 literally millions of dollars in monies and liquidated funds to its principals, LIBERMAN and
15 MITCHELL, during a time that LAS VEGAS LAND PARTNERS, LLC, knew or reasonably
16 should have known of Nype's substantial monetary claims against it.

17 82. The real estate and monetary transfers alleged hereinabove effectively rendered
18 LAS VEGAS LAND PARTNERS insolvent, and unable to pay its debts on a regular basis as they
19 matured, including but not limited to the monies that the Eighth Judicial District Court has
20 determined are owed to Nype.

21 83. Upon information and belief, the aforesaid actions of all Defendants were
22 undertaken consciously, knowingly, willfully, and specifically in an effort to defeat and avoid
23 Plaintiffs' rights which were being pursued in the First Case.

24 84. Upon information and belief, the Trustee is informed and believes and thereon
25 alleges that at all times herein mentioned Defendants, **LIBERMAN AND MITCHELL** were and
26 are the alter ego of LAS VEGAS LAND PARTNERS, LLC, that said Defendant did and still does
27 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
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2 still exists a unity of ownership between them; that the individuality and separateness of each
3 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
4 framework which LAS VEGAS LAND PARTNERS, LLC used and still use to conduct their
5 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
6 and fraud upon the Trustee will result if the theoretical separateness of LAS VEGAS LAND
7 PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being
8 sought herein.

9 85. Upon information and belief, the Trustee is informed and believes and thereon
10 alleges that at all times herein mentioned Defendants, **MEYER PROPERTY, LLC** was and is
11 the alter ego of MEYER PROPERTY, LLC, that said Defendants did and still do dominate,
12 influence and control of MEYER PROPERTY, LLC, that there existed and still exists a unity of
13 ownership between them; that the individuality and separateness of each entity was and remains
14 non-existent; that each such entity was and remains a mere shell and naked framework which LAS
15 VEGAS LAND PARTNERS, LLC, MITCHELL and LIBERMAN used and still use to conduct
16 their business affairs; that each such entity is and remains inadequately capitalized; and that an
17 injustice and fraud upon the Trustee will result if the theoretical separateness of MEYER
18 PROPERTY, LLC entity is not disregarded and the said Defendant held liable for all relief being
19 sought herein.

20 86. Upon information and belief, the Trustee is informed and believes and thereon
21 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC,**
22 **LIBERMAN and MITCHELL** were and are the alter ego of ZOE PROPERTY, LLC, that said
23 Defendants did and still do dominate, influence and control of **ZOE PROPERTY, LLC**, that
24 there existed and still exists a unity of ownership between them; that the individuality and
25 separateness of each entity was and remains non-existent; that each such entity was and remains a
26 mere shell and naked framework which LAS VEGAS LAND PARTNERS, LLC, MITCHELL and
27 LIBERMAN used and still use to conduct their business affairs; that each such entity is and
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2 remains inadequately capitalized; and that an injustice and fraud upon the Trustee will result if the
3 theoretical separateness of **ZOE PROPERTY, LLC** entity is not disregarded and the said
4 Defendant held liable for all relief being sought herein.

5 87. Upon information and belief, the Trustee is informed and believes and thereon
6 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
7 **LIBERMAN and MITCHELL** were and are the alter ego of **LEAH PROPERTY, LLC**, that
8 said Defendants did and still do dominate, influence and control of **LEAH PROPERTY, LLC**, that
9 there existed and still exists a unity of ownership between them; that the individuality and
10 separateness of each entity was and remains non-existent; that each such entity was and remains a
11 mere shell and naked framework which **LAS VEGAS LAND PARTNERS, LLC**, **MITCHELL** and
12 **LIBERMAN** use and still use to conduct their business affairs; that each such entity is and
13 remains inadequately capitalized; and that an injustice and fraud upon the Trustee will result if the
14 theoretical separateness of **LEAH PROPERTY, LLC**, if entity is not disregarded and the said
15 Defendant held liable for all relief being sought herein.

16 88. Upon information and belief, the Trustee is informed and believes and thereon
17 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
18 were and are the alter ego of **WINK ONE, LLC**, that said Defendant did and still does dominate,
19 influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists
20 a unity of ownership between them; that the individuality and separateness of each entity was and
21 remains non-existent; that each such entity was and remains a mere shell and naked framework
22 which **WINK ONE, LLC** used and still use to conduct their business affairs; that each such entity
23 is and remains inadequately capitalized; and that an injustice and fraud upon the Trustee will
24 result if the theoretical separateness of **WINK ONE, LLC** if entity is not disregarded and the said
25 Defendant held liable for all relief being sought herein

26 89. Upon information and belief, the Trustee is informed and believes and thereon
27 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
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2 were and are the alter ego of **LIVE WORK, LLC**, that said Defendant did and still does
3 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
4 still exists a unity of ownership between them; that the individuality and separateness of each
5 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
6 framework which **LIVE WORK, LLC** used and still use to conduct their business affairs; that
7 each such entity is and remains inadequately capitalized; and that an injustice and fraud upon the
8 Trustee will result if the theoretical separateness of **LIVE WORK, LLC** if entity if entity is not
9 disregarded and the said Defendant held liable for all relief being sought herein.

10 90. Upon information and belief, the Trustee is informed and believes and thereon
11 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
12 were and are the alter ego of **LIVE WORK MANAGER, LLC**, that said Defendant did and still
13 does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there
14 existed and still exists a unity of ownership between them; that the individuality and separateness
15 of each entity was and remains non-existent; that each such entity was and remains a mere shell
16 and naked framework which **LIVE WORK MANAGER, LLC** used and still use to conduct their
17 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
18 and fraud upon the Trustee will result if the theoretical separateness of **LIVE WORK**
19 **MANAGER, LLC** entity is not disregarded and the said Defendant held liable for all relief being
20 sought herein.

21 91. Upon information and belief, the Trustee is informed and believes and thereon
22 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
23 was and are the alter ego of **AQUARIUS OWNER, LLC**, that said Defendant did and still does
24 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
25 still exists a unity of ownership between them; that the individuality and separateness of each
26 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
27 framework which **AQUARIUS OWNER, LLC** used and still use to conduct their business
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2 affairs; that each such entity remains inadequately capitalized; and that an injustice and fraud upon
3 the Trustee will result if the theoretical separateness of **AQUARIUS OWNER, LLC** entity is not
4 disregarded and the said Defendant held liable for all relief being sought herein.

5 92. Upon information and belief, the Trustee is informed and believes and thereon
6 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
7 were and are the alter ego of **LVLP HOLDINGS, LLC**, that said Defendant did and still does
8 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
9 still exists a unity of ownership between them; that the individuality and separateness of each
10 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
11 framework which **LVLP HOLDINGS, LLC** used and still use to conduct their business affairs;
12 that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon
13 the Trustee will result if the theoretical separateness of **LVLP HOLDINGS, LLC** entity is not
14 disregarded and the said Defendant held liable for all relief being sought herein.

15 93. Upon information and belief, the Trustee is informed and believes and thereon
16 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
17 were and are the alter ego of **MITCHELL HOLDINGS, LLC**, that said Defendant did and still
18 does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there
19 existed and still exists a unity of ownership between them; that the individuality and separateness
20 of each entity was and remains non-existent; that each such entity was and remains a mere shell
21 and naked framework which **MITCHELL HOLDINGS, LLC** used and still use to conduct their
22 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
23 and fraud upon the Trustee will result if the theoretical separateness **MITCHELL HOLDINGS,**
24 **LLC** entity is not disregarded and the said Defendant held liable for all relief being sought herein.

25 94. Upon information and belief, the Trustee is informed and believes and thereon
26 alleges that at all times herein mentioned, **LAS VEGAS LAND PARTNERS, LLC**, is and was the
27 alter ego of **305 LAS VEGAS, LLC**, that **LVLP** did and still does dominate, influence and
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2 control of 305 Las Vegas, LLC, that there existed and still exists a unity of ownership between
3 them; that the individuality and separateness of each entity was and remains non-existent; LVLV
4 was and remains a mere shell and naked framework which **305 LAS VEGAS, LLC**, used and
5 still use to conduct their business affairs; that an injustice and fraud upon the Trustee will result if
6 the theoretical separateness of **LAS VEGAS LAND PARTNERS, LLC** entity is not disregarded
7 and the said Defendant held liable for all relief being sought herein.

8 95. Upon information and belief, the Trustee is informed and believes and thereon
9 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
10 was and are the alter ego of **LIVE WORKS TIC SUCCESSOR, LLC**, that said Defendant did
11 and still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that
12 there existed and still exists a unity of ownership between them; that the individuality and
13 separateness of each entity was and remains non-existent; that each such entity was and remains a
14 mere shell and naked framework which **LIVE WORKS TIC SUCCESSOR, LLC** used and still
15 use to conduct their business affairs; that each such entity is and remains inadequately capitalized;
16 and that an injustice and fraud upon the Trustee will result if the theoretical separateness of **LAS**
17 **VEGAS LAND PARTNERS, LLC** entity is not disregarded and the said Defendant held liable for
18 all relief being sought herein.

19 96. Upon information and belief, the Trustee is informed and believes and thereon
20 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
21 were and are the alter ego of **FC/LV VEGAS, LLC**, that said Defendant did and still does
22 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
23 still exists a unity of ownership between them; that the individuality and separateness of each
24 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
25 framework which **FC/LV VEGAS, LLC** used and still use to conduct their business affairs; that
26 each such entity is and remains inadequately capitalized; and that an injustice and fraud upon the
27 Trustee will result if the theoretical separateness of **LAS VEGAS LAND PARTNERS, LLC** entity
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2 is not disregarded and the said Defendant held liable for all relief being sought herein.

3 97. Upon information and belief, the Trustee is informed and believes and thereon
4 alleges that at all times herein mentioned Defendants, LAS VEGAS LAND PARTNERS, LLC,
5 were and are the alter ego of **CASINO COOLIDGE, LLC**, that said Defendant did and still does
6 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
7 still exists a unity of ownership between them; that the individuality and separateness of each
8 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
9 framework which **CASINO COOLIDGE, LLC** used and still use to conduct their business
10 affairs; that each such entity is and remains inadequately capitalized; and that an injustice and
11 fraud upon the Trustee will result if the theoretical separateness of LAS VEGAS LAND
12 PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being
13 sought herein.

14 98. This New Case is effectively an extension and development of the first litigation,
15 and is an effort by the Trustee to avoid the wrongful misconduct of Defendants and each of them,
16 in attempting to avoid LVLP's creditor's rights and improperly dissipate the assets of LAS
17 VEGAS LAND PARTNERS, LLC, which were, are, and should be available to satisfy various
18 creditor claims.

19 **FIRST CLAIM FOR RELIEF**

20 **(Constructive Trust)**

21 99. The Trustee incorporates by reference paragraphs 1 through 98 as though fully
22 set forth.

23 100. Pursuant to the pending litigation in the First Case, it was understood that options
24 or equity in various Real Estate parcels owned by LAS VEGAS LAND PARTNERS, LLC in or
25 about 2006, as well as "Choses In Action" such as equity ownership in various affiliated entities
26 would be available to satisfy Plaintiff's judgment.

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2 101. Defendants knew or reasonably should have known, that the subject property
3 interests were valuable, and that the legitimate equity in the subject real property or beneficial
4 ownership of the affiliate entities and limited liability ownership interest would be sufficient to
5 satisfy Nype's claim, but for the fraudulent conveyances alleged herein.

6 102. Defendants transferred, hypothecated and encumbered various real property for
7 improper purposes and inadequate consideration.

8 103. All of the foregoing facts make it just and equitable that this court impose and
9 declare a constructive trust upon the subject property interest, and any proceeds therefrom, in
10 favor of the Plaintiffs and the Trustee.

11 104. The court can and should declare a lien against the subject properties, order the
12 sale thereof, and/or order the payment of all rents or monies received from the subject property to
13 Plaintiffs and the Trustee herein.

14 105. It has been necessary for Trustee to retain the services of an attorney to prosecute
15 this action and Plaintiff is therefore entitled to an award of reasonable attorneys' fees

16 **SECOND CLAIM FOR RELIEF**

17 **(Fraudulent Conveyance)**

18 106. The Trustee incorporates by reference paragraphs 1 through 105 as though fully
19 set forth.

20 107. The Trustee is informed and believes, and on that basis alleges that Defendants
21 have taken numerous actions to avoid satisfying various creditor claims against LAS VEGAS
22 LAND PARTNERS, LLC.

23 108. The Trustee alleges on information and belief, that in order to avoid potential
24 execution against real estate interests, *inter alia*, LAS VEGAS LAND PARTNERS, LLC took
25 steps to hypothecate and transfer numerous property interests and valuable interests to the other
26 Defendants herein.

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2 109. The Trustee is informed and believes, and on that basis alleges that such transfers
3 by Defendants were undertaken in an effort to avoid the adverse financial consequences of
4 Plaintiffs' pending claims, as well as those of other creditors.

5 110. The Trustee is informed and believes, and on that basis alleges that the
6 aforementioned transfers were gratuitous, or for inadequate or disguised consideration, made
7 without obligation, and made with an intent to deprive Plaintiff's and other creditors of their
8 ability to recover such funds directly from LAS VEGAS LAND PARTNERS, LLC in connection
9 with the monies owed.

10 111. As a result of the aforementioned acts of Defendants, Plaintiffs and the Trustee are
11 entitled to a Judgment against Defendants, jointly and severally, in an amount in excess of
12 \$15,000.00.

13 112. On or about August 14, 2014, during the course of proceedings initiated to enforce
14 and collect upon the judgment in the First Case, Defendant LAS VEGAS LAND PARTNERS,
15 LLC first provided tax returns and detail financial information which revealed to Nype, for the
16 first time, that it had transferred its interest in numerous real estate parcels, as well as many
17 millions of dollars, to the entity defendants and/or Liberman and Mitchell, during the ongoing
18 pendency of the first case.

19 113. In making such transfers, LAS VEGAS LAND PARTNERS, LLC, and Defendants
20 MITCHELL and LIBERMAN have acted with the actual intent to hinder delay and to defraud
21 their creditors, including Nype, but fraudulently transferring assets to insiders and the entity
22 defendants.

23 114. The Trustee lacks an adequate remedy at law because, unless the relief sought in
24 this complaint is granted, LAS VEGAS LAND PARTNERS, LLC with the aid of the Defendants
25 herein will have succeeded in fraudulently transferring its assets to insiders and/or related entities,
26 depriving creditors of the opportunity to collect monies due and owing from LAS VEGAS LAND
27 PARTNERS, LLC.

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2 115. The Trustee has an high probability of success on the merits in this action.

3 116. The aforesaid transfer of assets to insiders and/or the entity defendants was made
4 with actual intent to hinder, delay or defraud creditors, most significantly Nype, and these
5 transfers therefore constitute fraudulent transfers in violation of NRS 112.180.

6 117. LAS VEGAS LAND PARTNERS, LLC did not receive reasonably equivalent
7 value for the transfers herein alleged.

8 118. LAS VEGAS LAND PARTNERS, LLC and its principals intended to incur or
9 reasonably should have believed they would incur debts beyond its ability to pay the same as they
10 become due, and thus the transfers at issue are transfers in violation of Nevada law.

11 119. Because of the special circumstances of this case, in which LAS VEGAS LAND
12 PARTNERS, LLC is liable for a judgment it has consistently ignored and avoided, having
13 committed fraud to avoid the judgment and its debts, and the hiding assets, and also constituting a
14 risk of further affirmative frustration of valid efforts by Nype and other creditors to collect upon
15 their claims, the Trustee is entitled to:

- 16 (1) The appointment of receiver to take possession of the assets of
17 LVLP, LLC;
- 18 (2) An injunction against further dissipation, disposition, or assignment
19 of any and all assets and property owned by LAS VEGAS LAND
20 PARTNERS, LLC;
- 21 (3) Any other relief that the circumstances may require, including a
22 declaration that the transfers in question are void, and that the assets
23 in question are subject to execution by Nype.

24 120. It has been necessary for Trustee to retain the services of an attorney to prosecute
25 this action, and Trustee is, therefore, entitled to reasonable attorneys' fees.

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THIRD CLAIM FOR RELIEF

(Civil Conspiracy)

121. The Trustee incorporates by reference paragraphs 1 through 120 as though fully set forth.

122 As alleged hereinabove, and upon information and belief, the transfer of the subject real estate and substantial monetary amounts were undertaken by Defendants with full knowledge as to the relevant circumstances and in an effort to participate in transactions in derogation of the rights of creditors.

123. The knowing and willful conduct of the entity Defendants in agreeing to receive the subject real property and act as a nominee for said LAS VEGAS LAND PARTNERS, LLC, LIBERMAN and MITCHELL constitute acts of civil conspiracy.

124. The Defendants, and each of them worked together in concerted actions with the intent to accomplish an unlawful purpose, vis a vis Plaintiffs and other creditors.

125. The purpose of the unlawful, concerted actions of Defendants was intended to, or would likely result in direct harm to the creditors of LVLV.

126. As a direct and proximate result of the aforesaid civil conspiracy, undertaken between the Defendants, Plaintiffs and the Trustee have been damaged in an amount in excess of \$15,000.00.

127. As alleged hereinabove, upon information and belief, Defendants' conduct was willful, knowing, intentional, and malicious, as a matter of law, entitling Plaintiffs and the Trustee to recover exemplary damages in an amount in excess of \$15,000.00.

128. That it has been necessary for the Trustee to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to reasonable attorneys' fees.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief)

129. The Trustee incorporates by references Paragraphs 1 through 128 as though fully set forth herein.

130. A true and ripe controversy exists as to the dispute, and declaratory relief pursuant to NRS 30.040 is necessary to declare the respective rights, responsibilities, and obligations between the parties as a consequence of Plaintiffs' judgment against LAS VEGAS LAND PARTNERS, LLC, and as relates to the various transactions undertaken by Defendants, including but not limited to transactions involving various parcels of valuable Las Vegas Real Estate.

131. For all of the reasons set forth hereinabove, Defendants have acted wrongfully and in violation of its creditors', and a direct declaration as to the invalidity of Defendants' transfers, and such should be determined and declared by the court.

132. That it has been necessary for the Trustee to retain the services of an attorney to prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

FIFTH CLAIM FOR RELIEF

(Alter Ego)

133. Plaintiff incorporates by references Paragraphs 1 through 132 as though fully set forth herein.

134. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIAS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LV VEGAS, LLC, CASINO COOLIDGE, LLC, and each of them, were and remain the alter-egos of each other; that said Defendants did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and

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2 separateness of each entity was and remains non-existent; that each such entity was and remains a
3 mere shell and naked framework which the other Defendants used and still use to conduct their
4 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
5 and fraud upon creditors will result if the theoretical separateness of the Defendant entities is not
6 disregarded and each such Defendant held liable for all relief being sought herein.

7 135. Upon information and belief, to the extent that one or more of the Defendant
8 entities is nominally owned or operated by or through LAS VEGAS LAND PARTNERS, LLC, or
9 Defendants LIBERMAN or MITCHELL with respect to one or more of the Defendant entities, which
10 entities as a practical matter exist with functional unity of ownership in said LAS VEGAS LAND
11 PARTNERS, LLC or Defendants LIBERMAN or MITCHELL, the true and factual individuality and
12 separateness of each such entity was and remains non-existent; each such entity was and remains a
13 mere shell and naked framework, which LAS VEGAS LAND PARTNERS, LLC and Defendants
14 LIBERMAN or MITCHELL utilize, through the offices of said Defendants LAS VEGAS LAND
15 PARTNERS, LLC, LIBERMAN or MITCHELL and/or through nominees and others to conduct their
16 business affairs. Each such entity is, upon information and belief, merely another nominal
17 manifestation of the business and financial affairs of LAS VEGAS LAND PARTNERS, LLC and
18 the Defendants LIBERMAN or MITCHELL, and to recognize any such separate entity would work
19 as separate and distinct from LAS VEGAS LAND PARTNERS, LLC and Defendants LIBERMAN
20 or MITCHELL, an injustice and fraud upon creditors, to the extent the theoretical or putative
21 separateness of such entity is not disregarded and said nominal Defendants held liable for all the relief
22 being sought herein.

23 136. As a matter of both statutory common law, and prior declarations of the Eighth
24 Judicial District Court, it is appropriate that the Court further determine and declare that all of the
25 aforesaid entities be held to be the Alter Egos of LAS VEGAS LAND PARTNERS, LLC and of
26 Defendants LIBERMAN or MITCHELL, and that therefore the various Defendants named herein can
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2 and should be jointly and severely liable to the Plaintiffs and Trustee with regard to all claims
3 asserted.

4 137. That it has been necessary for the Trustee to retain the services of an attorney to
5 prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

6 **WHEREFORE**, Plaintiff prays for judgment against Defendants and each of them
7 as follows:

- 8 1. For a sum in excess of \$15,000.00;
- 9 2. For exemplary damages in an amount in excess of \$10,000.00;
- 10 3. For the imposition of a constructive trust upon the various parcels of real property and
11 valuable equity ownership interests formerly owned by LAS VEGAS LAND
12 PARTNERS, LLC for the benefit of Plaintiff;
- 13 4. For an order requiring the sale of the parcels of real estate and valuable ownership
14 interest and an order directing the payment of all rents with regard to the subject real
15 property be made to the order of the Trustee herein;
- 16 5. For the Appointment of a Receiver;
- 17 6. For interest upon all damages which Plaintiffs and the Trustee recovers at the Nevada
18 Statutory rate.
- 19 7. For a declaration as to the invalidity of Defendants' transactions as regards to the
20 various valuable real estate interests and equity ownership interests formerly owned
21 by LAS VEGAS LAND PARTNERS, LLC;
- 22 8. For a determination that the Defendants are the alter egos of each other , and should
23 all be held liable to Plaintiff, jointly and severally, for the damages sought herein.
- 24 9. For a declaration that the actions by LAS VEGAS LAND PARTNERS, LLC, in
25 conjunction with the Defendants herein, to convey valuable property and monies to
26 other Defendants with the intent to deprive creditors of their ability to recover funds
27 was undertaking in a knowing, willful, intentional, and malicious manner, which
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under Nevada law constitute malice and is sufficient grounds to invoke the availability of exemplary damages against Defendants, and each of them.

10. As a consequence of the willful malicious and intentional misconduct of the Defendants and each of them, Plaintiffs and the Trustee are entitled to recover exemplary damages from each Defendant in accordance with Nevada Law, in an amount in excess of \$15,000.00, the precise amount to be proven at time of trial.

11. For reasonable attorneys' fees for the prosecution of this suit; and

12. For such other and further relief as the Court may deem just and proper.

DATED this ____ day of November, 2019.

JOHN W. MUIJE & ASSOCIATES

By: _____
JOHN W. MUIJE, ESQ.
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Las Vegas, Nevada 89104
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2 under Nevada law constitute malice and is sufficient grounds to invoke the availability
3 of exemplary damages against Defendants, and each of them.

4 10. As a consequence of the willful malicious and intentional misconduct of the
5 Defendants and each of them, Plaintiffs and the Trustee are entitled to recover
6 exemplary damages from each Defendant in accordance with Nevada Law, in an
7 amount in excess of \$15,000.00, the precise amount to be proven at time of trial.

8 11. For reasonable attorneys' fees for the prosecution of this suit; and

9 12 For such other and further relief as the Court may deem just and proper.

10 DATED this ____ day of November, 2019.

11 JOHN W. MUIJE & ASSOCIATES

12
13
14 By: _____
15 JOHN W. MUIJE, ESQ.
16 Nevada Bar No. 2419
17 1840 E. Sahara Ave #106
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EXHIBIT B

Electronically Filed
11/18/2019 11:21 AM
Steven D. Grierson
CLERK OF THE COURT



1 **ORDR**
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11 **SHELLEY D, KROHN**

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DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE AND REVENUS PLUS,
LLC

Plaintiffs,

vs.

DAVID J. MITCHELL; BARNET LIBERMAN; LAS
VEGAS LAND PARTNERS, LLC; MEYER
PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,
LLC; LIVE WORK MANAGER, LLC; AQUARIUS
OWNER, LLC; LVLP HOLDINGS, LLC;
MITCHELL HOLDINGS, LLC; LIBERMAN
HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE
WORKS TIC SUCCESSOR, LLC; CASINO
COOLIDGE LLC; DOES I through III, and ROE
CORPORATIONS I through III, inclusive,

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: Nov. 18, 2019

Time of Hearing: 9:00 a.m.

ORDER GRANTING TRUSTEE'S MOTION TO INTERVENE

This matter came on for hearing on Trustee's Motion to Intervene on the time and date
noted above. JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES,
appearing on behalf of Proposed Plaintiff-In-Intervention, SHELLEY D, KROHN.

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1 IT IS HEREBY ORDERD, ADJUDGED AND DECREED, that Proposed Plaintiff-In-
2 Intervention, SHELLEY D. KROHN's, Motion to Intervene be and the same is hereby
3 GRANTED.

4 DATED this 18th day of Nov., 2019

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9 DISTRICT JUDGE
10

11 Submitted by:

12 JOHN W. MUIJE & ASSOCIATES
13

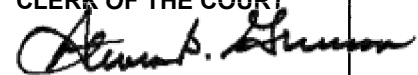
14
15 BY: 

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EXHIBIT C

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11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 RUSSELL L. NYPE AND REVENUS PLUS,
15 LLC

CASE NO: A-16-740689-B

16 Plaintiffs,

DEPT. NO: XI

17 vs.

18 **COMPLAINT IN INTERVENTION
19 FOR:**

20 DAVID J. MITCHELL; BARNET LIBERMAN;
21 MEYER PROPERTY, LTD.; ZOE PROPERTY,
22 LLC; LEAH PROPERTY, LLC; WINK ONE, LLC;
23 LIVE WORK, LLC; LIVE WORK MANAGER,
24 LLC; AQUARIUS OWNER, LLC; LVLP
25 HOLDINGS, LLC; MITCHELL HOLDINGS, LLC;
26 305 LAS VEGAS, LLC; LIVE WORKS TIC
27 SUCCESSOR, LLC; CASINO COOLIDGE LLC;
28 DOES I through III, and ROE CORPORATIONS I
through III, inclusive,

1. **CONSTRUCTIVE TRUST;**
2. **FRAUDULENT CONVEYANCE;**
3. **CONSPIRACY TO DEFRAUD;**
4. **DECLARATORY RELIEF; AND**
5. **ALTER EGO**

**ARBITRATION EXEMPT
(EQUITABLE RELIEF)**

Mitchell Defendants.

SHELLEY D. KROHN, U.S. BANKRUPTCY
TRUSTEE

Proposed Plaintiff-In-Intervention

COMES NOW, SHELLEY D. KROHN, U.S. Bankruptcy Trustee (hereinafter referred to as
"TRUSTEE"), and as and for causes of action against the Defendants, DAVID J. MITCHELL;
BARNET LIBERMAN; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC;

1 WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC;
2 LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC
3 SUCCESSOR, LLC; FC/LW VEGAS, LLC; CASINO COOLIDGE LLC, alleges and shows as follows:
4

5 **GENERAL FACTUAL ALLEGATIONS**

6 1. The Trustee was duly appointed to act as the Trustee in the Bankruptcy Case of
7 Las Vegas Land Partners, LLC, Case No. BK-19-15333-mkn (hereinafter referred to as
8 “TRUSTEE”).

9 2. Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter
10 “NYPE”), a New York Limited Liability Company.
11

12 3. Defendant, DAVID J. MITCHELL (hereinafter “Mitchell”), is an adult resident of
13 New York.

14 4. Defendant, BARNETT LIBERMAN (hereinafter “Liberma”), is an adult resident
15 of New York.

16 5. Aquarius Owner, LLC is or was a Delaware limited liability company registered to
17 do business in the State of Nevada in November, 2004, and maintained its registration through
18 and including approximately November, 2009.
19

20 6. On information and belief, Aquarius Owner LLC was owned and directed by
21 Mitchell, Liberman, and/or LVLP.

22 7. In that context, various real property transfers and ownership equity took place
23 between LVLP and/or Aquarius Owner, LLC, during the operative time, and on information and
24 belief, financial distributions and transactions occurred between Aquarius Owner LLC, and its
25 principals on a recurring basis, most of which were never disclosed in publicly available records
26 or documents.
27
28

1 8. FC/LW Vegas is or was a Delaware limited liability company registered to do
2 business in the State of Nevada in February 2011 which has maintained registration through the
3 present.
4

5 9. FC/LW, LLC, on information and belief, is an entity beneficially and jointly
6 owned and operated by Liberman, Mitchell, LVLP, LIVE WORK, LLC and non-party Forest City
7 Enterprises, for purposes of developing and managing various real property interest in Southern
8 Nevada.
9

10 10 In that context, various real property transfers and ownership equity took place
11 between LIVE WORK, LLC and/or FC/LW, LLC, during the operative time, and on information
12 and belief, financial distributions and transactions occurred between FC/LV Vegas, LLC, and its
13 principals on a recurring basis, most of which were never disclosed in publicly available records
14 or documents.
15

16 11. Leah Property, LLC is a Delaware limited liability that first registered to do
17 business in Southern Nevada in approximately February, 2005, and continued to be active and
18 operate in the Southern Nevada area through and including February, 2015.

19 13. On information and belief, Leah Property LLC is owned, managed, and operated
20 by Liberman, at all relevant times.

21 14. In that context, various real property transfers and ownership equity took place
22 between LVLP and/or Leah Property, LLC, during the operative time, and on information and
23 belief, financial distributions and transactions occurred between Leah Property, LLC and its
24

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1 principals on a recurring basis, most of which were never disclosed in publicly available records
2 or documents..
3

4 15. Live Work LLC is a Delaware limited liability company who first became active in
5 Southern Nevada in or about April, 2005, and in fact was a plaintiff in the original underlying
6 lawsuit with LVLP versus the plaintiffs herein. Live Work, LLC, on information and belief,
7 continued to be active and operating in Southern Nevada through and including approximately
8 April, 2012.
9

10 16. On information and belief, Live Work, LLC was owned, operated, and managed by
11 Liberman, Mitchell, LVLP, Live Work Manager, LLC, and/or Mitchell Holdings, and was an
12 active.
13

14 17. In that context, various real property transfers and ownership equity took place
15 between LVLP and/or Live Work, LLC, during the operative time, and on information and belief,
16 financial distributions and transactions occurred between Live Work Manager, LLC and its
17 principals on a recurring basis, most of which were never disclosed in publicly available records
18 or documents.
19

20 18. Livework Manager, LLC was a Delaware Limited Liability that first registered to
21 do business in the State of Nevada in approximately April, 2005, and continued active and in
22 business in Southern Nevada through the present.
23

24 19. Livework Manager, LLC was owned, operated and managed by, on information
25 and belief, by Liberman, Mitchell, and/or LVLP.
26

27 20. In that context, various real property transfers and ownership equity took place
28 between LVLP and/or Live work Manger, LLC, during the operative time, and on information and

1
2 belief, financial distributions and transactions occurred between Livework Manager, LLC and its
3 principals on a recurring basis, most of which were never disclosed in publicly available records
4 or documents.

5 21. Zoe Property, LLC is a Delaware Limited Liability Company that first registered
6 and became active in Southern Nevada in or about November 2004, and in fact was one of the
7 original plaintiffs along with Live Work, LLC and LVLP versus the plaintiffs herein. On
8 information and belief, Zoe Property, LLC operated and continued to be active in Southern
9 Nevada through approximately November, 2007.

10
11 22. Zoe Property, LLC, was owned, operated and managed by, on information and
12 belief, by Liberman, Mitchell and/or LVLP.

13
14 23. In that context, various real property transfers and ownership equity took place \
15 \between LVLP and/or Zoe Property, LLC, during the operative time, and on information and
16 belief, financial distributions and transactions occurred between Zoe Property, LLC and its
17 principals on a recurring basis, most of which were never disclosed in publicly available records
18 or documents.

19 24. Wink One, LLC is a Delaware limited liability company that registered to do
20 business in the State of Nevada in approximately April, 2008, and remained active, according to
21 Secretary of State records, through and including approximately April, 2009. Wink One, LLC, on
22 information and belief, was owned, operated and managed by Liberman, Mitchell, and/or LVLP.

23
24 25. Wink One, LLC was owned, operated and managed by, on information and belief,
25 by Liberman, Mitchell, and/or LVLP.
26
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2 26. In that context, various real property transfers and ownership equity took place
3 between LVLP and/or Wink One, LLC, during the operative time, and on information and belief,
4 financial distributions and transactions occurred between Wink One, LLC and its principals on a
5 recurring basis, most of which were never disclosed in publicly available records or documents..

6 27. Casino Coolidge, LLC is a Delaware limited liability company that first registered
7 to do business in Southern Nevada in or about October, 2014.
8

9 28. On information and belief, Casino Coolidge, LLC is owned, operated and managed
10 by Liberman, Mitchell, and/or LVLP.

11 29. In that context, various real property transfers and ownership equity took place
12 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on information and
13 belief, financial distributions and transactions occurred between Casino Coolidge, LLC and its
14 principals on a recurring basis, most of which were never disclosed in publicly available records
15 or documents and continues to operate and be active in Southern Nevada through the present.
16

17 30. In that context, various real property transfers and ownership equity took place
18 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on information and
19 belief, financial distributions and transactions occurred between Casino Coolidge, LLC and its
20 principals on a recurring basis, most of which were never disclosed in publicly available records
21 or documents.
22

23 31. 305 Las Vegas, LLC is a Delaware limited liability company that first registered
24 and qualified to do business in Southern Nevada in approximately April, 2007, and remains active
25 and doing business in Southern Nevada through the present.
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1 32. On information and belief, 305 Las Vegas, LLC was originally owned, operated
2 and managed by Liberman and/or LVLP.

3 33. In that context, various real property transfers and ownership equity took place
4 between LVLP, its affiliates and/or 305 Las Vegas, LLC, during the operative time, and on
5 information and belief, financial distributions and transactions occurred between 305 Las Vegas,
6 LLC, LVLP and its principals or affiliates on a recurring basis, most of which were never
7 disclosed in publicly available records or documents and continues to operate and be active in
8 Southern Nevada through the present.
9

10 34. In that context, various real property transfers and ownership equity took place
11 between LVLP and its affiliates and/or 305 Las Vegas, LLC, during the operative time, and on
12 information and belief, financial distributions and transactions occurred between 305 Las Vegas,
13 LLC, LVLP and its principals and affiliates on a recurring basis, most of which were never
14 disclosed in publicly available records or documents.
15

16 35. On information and belief, unbeknownst to Plaintiffs, in approximately 2012
17 305 Las Vegas, LLC engaged in an internal transaction resulting in the acquisition of the
18 beneficial interest of Mitchell by a Mr. Win Churchill, and a monetary distribution benefitting
19 Mitchell to the tune of \$7.5 million, all of which Plaintiff has only learned at very recent times.
20

21 36. On information and belief, MEYER PROPERTY, LTD., is fictitious entity that
22 was involved for a relatively short period of time with LEAH PROPERTY, LLC, and in the
23 context thereof participated in real estate transactions resulting in net financial gain to Leah and/or
24 Liberman, Mitchell, and/or LVLP, the specifics of which financial gains were never disclosed nor
25 reasonably discoverable by Plaintiffs herein.
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1
2 37. In that context, various real property transfers took place between LVLP and/or
3 Meyer Property, LLC, during the operative time, and on information and belief, financial
4 distributions and transactions occurred between Meyer Property, LLC and its principals on a
5 recurring basis, most of which were never disclosed in publicly available records or documents
6 and continues to operate and be active in the State of Nevada through the present.
7

8 38. On information and belief, Mitchell Holdings, LLC is a Delaware limited liability
9 company that never qualified to do business within the State of Nevada, but was used by
10 Defendant Mitchell for purposes of owning Mitchell's equity or beneficial interest in various other
11 defendants, and fuddling money back and forth between such entities, in a matter that would not
12 be detectable or readily discoverable by Plaintiffs or other creditors.
13

14 39. In that context, various real property transfers and ownership equity took place
15 between LVLP and/or Mitchell Holdings, LLC during the operative time, and on information and
16 belief, financial distributions and transactions occurred between Mitchell Holdings, LLC and its
17 principals on a recurring basis, most of which were never disclosed in publicly available records
18 or documents, is a Delaware limited liability that first registered to do business in Nevada in
19 approximately February, 2011, and continues to operate and do business, in good standing,
20 through and including this date.
21

22 40. Live Works TIC Successor, LLC, on information and belief, is an entity in
23 which Liberman, Mitchell, and/or Las Vegas Land Holdings had substantial equity or beneficial
24 interest, and was the ultimate recipient of financial proceeds, monies, emoluments and benefits
25 deriving from Live Work TIC Successor LLC, and a tendency and common agreement entered
26 into between Live Work TIC Successor, LLC and non-party Forest City Enterprises, through
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2 contractual and financial arrangements, referred to as the tenancy in common agreement, and
3 numerous subsequent amendments thereto.

4 41. In that context, various real property transfers and ownership equity took place
5 between LVLP and/or Live Works TIC Successor, LLC during the operative time, and on
6 information and belief, financial distributions and transactions occurred between Live Works TIC
7 Successor, LLC and its principals on a recurring basis, most of which were never disclosed in
8 publicly available records or documents..
9

10 42. Entity Defendants, MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
11 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC;
12 AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305
13 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LW VEGAS, LLC, are
14 believed to be Delaware limited liability companies and/or corporations which have conducted
15 business in the State of Nevada, and are alleged to be owned and/or controlled, in whole or in part
16 by Defendants, LAS VEGAS LAND PARTNERS, LLC, DAVID MITCHELL and BARNET
17 LIBERMAN.
18

19 43. LVLP, LLC, Mitchell, and Liberman, created the various Entity Defendants,
20 MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE,
21 LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP
22 HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC
23 SUCCESSOR, LLC; FC/LV VEGAS, LLC, on information and belief, and used multiple
24 sophisticated counsel for purposes of secreting, hiding, and conveying away valuable assets that
25 were available to satisfy creditors such as Plaintiffs as alleged more specifically hereinafter
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(hereinafter referred to as the "Asset Protection Scheme").

44 .That Plaintiffs do not at present know the true names and identities of those Entity Defendants, both corporate and individual, herein joined by fictitious names, but is informed and believes and therefore alleges that said Entity Defendants, are agents, employees, servants and representatives of the named Entity Defendants, or persons and entities acting in concert with the named Entity Defendants with respect to the premises herein plead, who are liable to the Plaintiffs by reason thereof, and the Plaintiffs pray leave to amend this Complaint to insert their true names and identities with appropriate allegations when the same becomes known.

45. Upon information and belief, part of the Asset Protection Scheme contemplated that the majority of the purported equity interests in the asset protection entities referred to in Paragraph 4 hereinabove be held in the name of LAS VEGAS LAND PARTNERS, LLC, or an associated entity, all of which were and are in reality controlled by DAVID J. MITCHELL and BARNET LIBERMAN.

46. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC received its equity interests in the asset protection entities gratuitously, or for wholly inadequate consideration.

47. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC is the nominal holder of the alleged interests, in the entity defendants, and takes its direction from DAVID J. MITCHELL and BARNET LIBERMAN, in managing and operation in the asset protection entities, which exist merely to help Entity Defendants, DAVID J. MITCHELL and BARNET LIBERMAN protect the original assets of LAS VEGAS LAND PARTNERS, LLC from creditors such as Plaintiffs.

1
2 48. Plaintiff is informed and believes, that the Entity Defendants are the recipients of
3 fraudulent transfers of real property, monies, and other valuable assets as hereinafter alleged.

4 49. Nype obtained a judgment against LVLP on or about April 10, 2015, and initiated
5 post-judgment collection and discovery efforts during the Summer of 2015.

6 50 The first post-judgment discovery documentation received by NYPE were various
7 tax returns and limited related information for LVLP, subsequently followed by various bank
8 statements and financial ledger documentation, spanning approximately late August, 2015 through
9 and including November 2015.

10
11 51. Most of the documentation so produced was already stale dated even when
12 produced, for example, the bank statements only being current through early 2014, SAID
13 documentation being produced in late 2015.

14
15 52. While the documentation produced in the latter half of 2015 disclosed some
16 suspicious circumstances and questionable transactions, it became clear that substantial additional
17 source document would be required to flesh out and understand precisely what had occurred.

18 53. Based on a preliminary review of the newly disclosed bank statements and ledgers,
19 it was noted that there was a comingling of funds related to various payments that appear to be
20 made on behalf of other entities. Although not all of the canceled checks were provided, the bank
21 statements of Las Vegas Land Partners, LLC located at Bates LVLP01-00001 to LVLP 08-00016
22 are indicative of usage by numerous related party entities. An example of the comingling can be
23 found at LVLP 07-00047, more specifically checks number 1287, 1288 and 1289 payable to the
24 Clark County Treasurer for parcels that do not appear to be recorded in the name of Las Vegas
25
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2 Land Partners, LLC and LVLP07-00048 more specifically checks number 1292 and 1293 payable
3 to Delaware Secretary of State to register other entities.

4 54. Documents provided labeled lvlp3a, a Las Vegas Land Partners, LLC document
5 consisting of a simple check register covering the period 1/13/11 to 4/27/15 also supports that
6 conclusion with the same date, payee and dollar amount information found on the checks.
7

8 58. A review of the full tax returns of LVLP Holdings, LLC provided at Bates
9 LVLP09-00001 to LVLP17-0064 Forms 1065 for calendar years 2005 to 2013 was first possible
10 in the late fall of 2015 as well. The tax returns are indicative of a combination and consolidation
11 of several related party Limited Liability Companies. The organizational documents located at
12 Bates LVLP18-00001 to LVLP19-00202 indicate that Las Vegas Land Partners, LLC is the single
13 equity member of Wink One, LLC and Livework Manager, LLC (who is the sole equity member
14 of Livework, LLC).

15 56. The members of Las Vegas Land Partners, LLC are Barnet Liberman and David
16 Mitchell (Bates LVLP19-00033-35).

17 57. There is no explanation for the usage of "LVLP Holdings, LLC" as the filing entity
18 for the tax returns. There are numerous real estate parcels, equity interests and sources of income
19 arising from the various consolidated entities listed on the tax returns of LVLP Holdings, LLC
20 that are not traceable to the ledgers provided by Las Vegas Land Partners, LLC.

21 58. Additionally there are numerous known sources of cash flow for example arising
22 from Wink One, LLC related to the RTC Lease that are not traceable to the accounting records.

23 59. During the Summer of 2016, NYPE again promulgated detailed specific written
24 discovery requests to LVLP, which requests were partially complied with in the form of additional
25 tax returns and ledger documentation, but mostly objected to.
26
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1
2 60. NYPE found it necessary to file a Motion to Compel discovery, and an Order
3 resulting from many months of contested discovery disputes was finally entered by the Court on
4 or about February 2, 2017.

5 61. Some additional documentation was ultimately produced, after repeated efforts by
6 NYPE, which disclosed additional improprieties, misconduct, and transactions by LVLP and its
7 principals designed to effectively render LVLP insolvent and unable to respond in damages,
8 which transactions will be discussed, in part, hereinafter.

9 62. The Order Compelling Discovery of February 2, 2017 has only been partially
10 complied with, and there remain substantial deficiencies and blocks of documentation that could
11 and should have been produced, but have not been, at least as of the date of LVLP's bankruptcy
12 filing.

13 64. Even the documents produced from January through March, 2017, are inherently
14 contradictory and do not match the data reported on the tax returns.

15 64. As one key example, however, of the importance of having accurate and complete
16 source records, attached hereto as Exhibit "1" and by this reference incorporated herein is a
17 certification by LVLP's New Jersey CPA for the first time disclosing that various affiliated and
18 associated entities are disregarded for tax and accounting purposes, and are all reported through
19 LVLP Holdings, LLC's business tax return.

20 65. The partial and incomplete documentation produced between the Fall of 2015, and
21 into 2017, did show extensive co-mingling, a failure to keep separate and adequate accounting
22 records for various affiliates and associated companies, a decided lack of concrete detail, and an
23 absolute failure to account for and explain various cash flow entries.

24 66. Given the incomplete documentation produced by defendants, the Plaintiff is
25 unable to determine where LVLP's cash flow is coming from, or where the resulting cash flow is
26 being applied.

1
2 67. On information and belief, the documentation available shows that LVLP, its
3 affiliates and associated entities were shifting money between one entity and the other to pay bills
4 and cover expenses as needed, and not in any coherent or recurring logical form.

5 68. The data that has been provided does not match LVLP tax returns, for example
6 failing to disclose substantial income.

7 69. Part of the data provided appears to account for, in part, the financial transactions
8 and relationship between LVLP and its joint venture partner (the entity which Nype procured to
9 provide financing for LVLP's projects), Forest City Enterprises.

10 70. The data available to date appears to show that arrangements were made with
11 Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build equity,
12 resulting in an absence of actual cash receipt by LVLP.

13 71. Despite what those records are showing, however, the tax returns are wholly silent
14 and fail to disclose the accrual of any imputed income or equity with respect to the Forest City
15 Joint Ventures, despite the fact that the joint venture documents suggest that LVLP's share of
16 revenue is being used to pay down debt and build equity, which would legally result in the accrual
17 of taxable income which the law requires to be accurately reported

18 72. Indeed, until the preliminary information was received in the Fall of 2015 as
19 supplemented by the early 2017 production, LVLP, based on the tax returns and documentation it
20 had previously supplied, continued to operate, appeared to have assets, appeared to be paying
21 taxes as accrued, and continued to vigorously defend itself.

22 73. One particular item first disclosed in the late Winter of 2017 is a statement by the
23 acknowledged accountant for LVLP that numerous of the other defendant entities herein are
24 "disregarded for tax purposes", meaning, on information and belief, that their revenue and
25 expenses, as well as income and liabilities, while being nominally contained in a separate legal
26 entity, are a practical matter, and as recognized by Federal Taxing Authorities, one and the same
27 as LVLP. See Exhibit "1".
28

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2 74. Additional discovery information fleshed out in 2016 and early 2017 includes the
3 fact that LVLP has been effectively insolvent since 2015, despite showing millions of dollars of
4 network on its tax returns, and has been forced to pay its attorneys in both the prior litigation and
5 the present litigation through personal checks and credit cards of Mitchell and/or Liberman, or
6 through affiliate entities.

7 75. Much of the newly acquired financial data also disclosed that corporate filing fees
8 for numerous of the defendants herein had been paid, *ad hoc*, from LVLP bank accounts,
9 interchangeably, despite said entities nominally maintaining or claiming separate legal status.

10 76. Plaintiffs RUSSELL L. NYPE and the REVENUE PLUS, LLC (hereinafter
11 collectively referred to as “Nype”) were Defendants in a case originally initiated by current
12 Defendants, LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC and ZOE
13 PROPERTIES, LLC in the Eighth Judicial District Court in Clark County, Nevada under Case
14 No. A551073, which case commenced on or about November 2, 2007 (hereinafter the “First
15 Case”).

16 77 Nype counterclaimed in that case with regard to his prior business dealings with
17 LAS VEGAS LAND PARTNERS, LLC, its associate entities, and its principals, BARNET
18 LIBERMAN (hereinafter “Liberman”) and DAVID J. MITCHELL (hereinafter “Mitchell”),
19 seeking compensation which he had been promised and which he had earned during the course of
20 the parties ongoing business dealings regarding the development of numerous Las Vegas real
21 estate holdings.

22 78. On information and belief, during the pendency of those proceedings, and after
23 defaulting on their obligations to Nype, Liberman and Mitchell undertook the process of creating
24 various affiliated and associate entities, including but not limited to several of the asset protection
25 entities as alleged in Paragraph 43 hereinabove, utilizing sophisticated corporate and asset
26 protection counsel.

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1
2 79. After years of protracted litigation, Nype ultimately obtained a judgment against
3 LAS VEGAS LAND PARTNERS, LLC on or about April 10, 2015 in the principal amount of
4 \$2,608,797.50.

5 80. As alleged hereinabove, upon information and belief, pursuant to the Asset
6 Protection Scheme, on various dates spanning 2007 through the present, Defendant LAS
7 VEGAS LAND PARTNERS, LLC commenced multiple real property and equity ownership
8 transfers to convey its valuable real property interests, to one or more the asset protection entities,
9 which asset protection entities continue to hold the subject real property or which have
10 subsequently transferred such to additional entities in which Liberman, Mitchell, and or LVLP
11 hold substantial beneficial interests.

12 81. In addition to the numerous real property conveyances alleged hereinabove, and
13 totally unbeknownst to Nype at the time LAS VEGAS LAND PARTNERS, LLC transferred
14 literally millions of dollars in monies and liquidated funds to its principals, LIBERMAN and
15 MITCHELL, during a time that LAS VEGAS LAND PARTNERS, LLC, knew or reasonably
16 should have known of Nype's substantial monetary claims against it.

17 82. The real estate and monetary transfers alleged hereinabove effectively rendered
18 LAS VEGAS LAND PARTNERS insolvent, and unable to pay its debts on a regular basis as they
19 matured, including but not limited to the monies that the Eighth Judicial District Court has
20 determined are owed to Nype.

21 83. Upon information and belief, the aforesaid actions of all Defendants were
22 undertaken consciously, knowingly, willfully, and specifically in an effort to defeat and avoid
23 Plaintiffs' rights which were being pursued in the First Case.

24 84. Upon information and belief, the Trustee is informed and believes and thereon
25 alleges that at all times herein mentioned Defendants, **LIBERMAN AND MITCHELL** were and
26 are the alter ego of LAS VEGAS LAND PARTNERS, LLC, that said Defendant did and still does
27 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
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2 still exists a unity of ownership between them; that the individuality and separateness of each
3 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
4 framework which LAS VEGAS LAND PARTNERS, LLC used and still use to conduct their
5 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
6 and fraud upon the Trustee will result if the theoretical separateness of LAS VEGAS LAND
7 PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being
8 sought herein.

9 85. Upon information and belief, the Trustee is informed and believes and thereon
10 alleges that at all times herein mentioned Defendants, **MEYER PROPERTY, LLC** was and is
11 the alter ego of MEYER PROPERTY, LLC, that said Defendants did and still do dominate,
12 influence and control of MEYER PROPERTY, LLC, that there existed and still exists a unity of
13 ownership between them; that the individuality and separateness of each entity was and remains
14 non-existent; that each such entity was and remains a mere shell and naked framework which LAS
15 VEGAS LAND PARTNERS, LLC, MITCHELL and LIBERMAN used and still use to conduct
16 their business affairs; that each such entity is and remains inadequately capitalized; and that an
17 injustice and fraud upon the Trustee will result if the theoretical separateness of MEYER
18 PROPERTY, LLC entity is not disregarded and the said Defendant held liable for all relief being
19 sought herein.

20 86. Upon information and belief, the Trustee is informed and believes and thereon
21 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC,**
22 **LIBERMAN and MITCHELL** were and are the alter ego of ZOE PROPERTY, LLC, that said
23 Defendants did and still do dominate, influence and control of **ZOE PROPERTY, LLC**, that
24 there existed and still exists a unity of ownership between them; that the individuality and
25 separateness of each entity was and remains non-existent; that each such entity was and remains a
26 mere shell and naked framework which LAS VEGAS LAND PARTNERS, LLC, MITCHELL and
27 LIBERMAN used and still use to conduct their business affairs; that each such entity is and
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2 remains inadequately capitalized; and that an injustice and fraud upon the Trustee will result if the
3 theoretical separateness of **ZOE PROPERTY, LLC** entity is not disregarded and the said
4 Defendant held liable for all relief being sought herein.

5 87. Upon information and belief, the Trustee is informed and believes and thereon
6 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
7 **LIBERMAN and MITCHELL** were and are the alter ego of **LEAH PROPERTY, LLC**, that
8 said Defendants did and still do dominate, influence and control of **LEAH PROPERTY, LLC**, that
9 there existed and still exists a unity of ownership between them; that the individuality and
10 separateness of each entity was and remains non-existent; that each such entity was and remains a
11 mere shell and naked framework which **LAS VEGAS LAND PARTNERS, LLC**, **MITCHELL** and
12 **LIBERMAN** use and still use to conduct their business affairs; that each such entity is and
13 remains inadequately capitalized; and that an injustice and fraud upon the Trustee will result if the
14 theoretical separateness of **LEAH PROPERTY, LLC**, if entity is not disregarded and the said
15 Defendant held liable for all relief being sought herein.

16 88. Upon information and belief, the Trustee is informed and believes and thereon
17 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
18 were and are the alter ego of **WINK ONE, LLC**, that said Defendant did and still does dominate,
19 influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists
20 a unity of ownership between them; that the individuality and separateness of each entity was and
21 remains non-existent; that each such entity was and remains a mere shell and naked framework
22 which **WINK ONE, LLC** used and still use to conduct their business affairs; that each such entity
23 is and remains inadequately capitalized; and that an injustice and fraud upon the Trustee will
24 result if the theoretical separateness of **WINK ONE, LLC** if entity is not disregarded and the said
25 Defendant held liable for all relief being sought herein

26 89. Upon information and belief, the Trustee is informed and believes and thereon
27 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
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2 were and are the alter ego of **LIVE WORK, LLC**, that said Defendant did and still does
3 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
4 still exists a unity of ownership between them; that the individuality and separateness of each
5 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
6 framework which **LIVE WORK, LLC** used and still use to conduct their business affairs; that
7 each such entity is and remains inadequately capitalized; and that an injustice and fraud upon the
8 Trustee will result if the theoretical separateness of **LIVE WORK, LLC** if entity if entity is not
9 disregarded and the said Defendant held liable for all relief being sought herein.

10 90. Upon information and belief, the Trustee is informed and believes and thereon
11 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
12 were and are the alter ego of **LIVE WORK MANAGER, LLC**, that said Defendant did and still
13 does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there
14 existed and still exists a unity of ownership between them; that the individuality and separateness
15 of each entity was and remains non-existent; that each such entity was and remains a mere shell
16 and naked framework which **LIVE WORK MANAGER, LLC** used and still use to conduct their
17 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
18 and fraud upon the Trustee will result if the theoretical separateness of **LIVE WORK**
19 **MANAGER, LLC** entity is not disregarded and the said Defendant held liable for all relief being
20 sought herein.

21 91. Upon information and belief, the Trustee is informed and believes and thereon
22 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
23 was and are the alter ego of **AQUARIUS OWNER, LLC**, that said Defendant did and still does
24 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
25 still exists a unity of ownership between them; that the individuality and separateness of each
26 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
27 framework which **AQUARIUS OWNER, LLC** used and still use to conduct their business
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2 affairs; that each such entity remains inadequately capitalized; and that an injustice and fraud upon
3 the Trustee will result if the theoretical separateness of **AQUARIUS OWNER, LLC** entity is not
4 disregarded and the said Defendant held liable for all relief being sought herein.

5 92. Upon information and belief, the Trustee is informed and believes and thereon
6 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**
7 were and are the alter ego of **LVLV HOLDINGS, LLC**, that said Defendant did and still does
8 dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and
9 still exists a unity of ownership between them; that the individuality and separateness of each
10 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
11 framework which **LVLV HOLDINGS, LLC** used and still use to conduct their business affairs;
12 that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon
13 the Trustee will result if the theoretical separateness of **LVLV HOLDINGS, LLC** entity is not
14 disregarded and the said Defendant held liable for all relief being sought herein.

15 93. Upon information and belief, the Trustee is informed and believes and thereon
16 alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**,
17 were and are the alter ego of **MITCHELL HOLDINGS, LLC**, that said Defendant did and still
18 does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there
19 existed and still exists a unity of ownership between them; that the individuality and separateness
20 of each entity was and remains non-existent; that each such entity was and remains a mere shell
21 and naked framework which **MITCHELL HOLDINGS, LLC** used and still use to conduct their
22 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
23 and fraud upon the Trustee will result if the theoretical separateness **MITCHELL HOLDINGS,**
24 **LLC** entity is not disregarded and the said Defendant held liable for all relief being sought herein.

25 94. Upon information and belief, the Trustee is informed and believes and thereon
26 alleges that at all times herein mentioned, **LAS VEGAS LAND PARTNERS, LLC**, is and was the
27 alter ego of **305 LAS VEGAS, LLC**, that **LVLV** did and still does dominate, influence and
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2 control of 305 Las Vegas, LLC, that there existed and still exists a unity of ownership between
3 them; that the individuality and separateness of each entity was and remains non-existent; LVLP
4 was and remains a mere shell and naked framework **which 305 LAS VEGAS, LLC**, used and
5 still use to conduct their business affairs; that an injustice and fraud upon the Trustee will result if
6 the theoretical separateness of LAS VEGAS LAND PARTNERS, LLC entity is not disregarded
7 and the said Defendant held liable for all relief being sought herein.

8 95. Upon information and belief, the Trustee is informed and believes and thereon
9 alleges that at all times herein mentioned Defendants, LAS VEGAS LAND PARTNERS, LLC,
10 was and are the alter ego of **LIVE WORKS TIC SUCCESSOR, LLC**, that said Defendant did
11 and still does dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that
12 there existed and still exists a unity of ownership between them; that the individuality and
13 separateness of each entity was and remains non-existent; that each such entity was and remains a
14 mere shell and naked framework which **LIVE WORKS TIC SUCCESSOR, LLC** used and still
15 use to conduct their business affairs; that each such entity is and remains inadequately capitalized;
16 and that an injustice and fraud upon the Trustee will result if the theoretical separateness of LAS
17 VEGAS LAND PARTNERS, LLC entity is not disregarded and the said Defendant held liable for
18 all relief being sought herein.

19 96. Upon information and belief, the Trustee is informed and believes and thereon
20 alleges that at all times herein mentioned Defendants, LAS VEGAS LAND PARTNERS, LLC,
21 were and are the alter ego of **FC/LV VEGAS, LLC**, that said Defendant did and still does
22 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
23 still exists a unity of ownership between them; that the individuality and separateness of each
24 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
25 framework which **FC/LV VEGAS, LLC** used and still use to conduct their business affairs; that
26 each such entity is and remains inadequately capitalized; and that an injustice and fraud upon the
27 Trustee will result if the theoretical separateness of LAS VEGAS LAND PARTNERS, LLC entity
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1 is not disregarded and the said Defendant held liable for all relief being sought herein.

2
3 97. Upon information and belief, the Trustee is informed and believes and thereon
4 alleges that at all times herein mentioned Defendants, LAS VEGAS LAND PARTNERS, LLC,
5 were and are the alter ego of **CASINO COOLIDGE, LLC**, that said Defendant did and still does
6 dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and
7 still exists a unity of ownership between them; that the individuality and separateness of each
8 entity was and remains non-existent; that each such entity was and remains a mere shell and naked
9 framework which **CASINO COOLIDGE, LLC** used and still use to conduct their business
10 affairs; that each such entity is and remains inadequately capitalized; and that an injustice and
11 fraud upon the Trustee will result if the theoretical separateness of LAS VEGAS LAND
12 PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being
13 sought herein.

14 98. This New Case is effectively an extension and development of the first litigation,
15 and is an effort by the Trustee to avoid the wrongful misconduct of Defendants and each of them,
16 in attempting to avoid LVLP's creditor's rights and improperly dissipate the assets of LAS
17 VEGAS LAND PARTNERS, LLC, which were, are, and should be available to satisfy various
18 creditor claims.

19 **FIRST CLAIM FOR RELIEF**

20 **(Constructive Trust)**

21 99. The Trustee incorporates by reference paragraphs 1 through 98 as though fully
22 set forth.

23 100. Pursuant to the pending litigation in the First Case, it was understood that options
24 or equity in various Real Estate parcels owned by LAS VEGAS LAND PARTNERS, LLC in or
25 about 2006, as well as "Choses In Action" such as equity ownership in various affiliated entities
26 would be available to satisfy Plaintiff's judgment.

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2 101. Defendants knew or reasonably should have known, that the subject property
3 interests were valuable, and that the legitimate equity in the subject real property or beneficial
4 ownership of the affiliate entities and limited liability ownership interest would be sufficient to
5 satisfy Nype's claim, but for the fraudulent conveyances alleged herein.

6 102. Defendants transferred, hypothecated and encumbered various real property for
7 improper purposes and inadequate consideration.

8 103. All of the foregoing facts make it just and equitable that this court impose and
9 declare a constructive trust upon the subject property interest, and any proceeds therefrom, in
10 favor of the Plaintiffs and the Trustee.

11 104. The court can and should declare a lien against the subject properties, order the
12 sale thereof, and/or order the payment of all rents or monies received from the subject property to
13 Plaintiffs and the Trustee herein.

14 105. It has been necessary for Trustee to retain the services of an attorney to prosecute
15 this action and Plaintiff is therefore entitled to an award of reasonable attorneys' fees

16 **SECOND CLAIM FOR RELIEF**

17 **(Fraudulent Conveyance)**

18 106. The Trustee incorporates by reference paragraphs 1 through 105 as though fully
19 set forth.

20 107. The Trustee is informed and believes, and on that basis alleges that Defendants
21 have taken numerous actions to avoid satisfying various creditor claims against LAS VEGAS
22 LAND PARTNERS, LLC.

23 108. The Trustee alleges on information and belief, that in order to avoid potential
24 execution against real estate interests, *inter alia*, LAS VEGAS LAND PARTNERS, LLC took
25 steps to hypothecate and transfer numerous property interests and valuable interests to the other
26 Defendants herein.

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2 109. The Trustee is informed and believes, and on that basis alleges that such transfers
3 by Defendants were undertaken in an effort to avoid the adverse financial consequences of
4 Plaintiffs' pending claims, as well as those of other creditors.

5 110. The Trustee is informed and believes, and on that basis alleges that the
6 aforementioned transfers were gratuitous, or for inadequate or disguised consideration, made
7 without obligation, and made with an intent to deprive Plaintiff's and other creditors of their
8 ability to recover such funds directly from LAS VEGAS LAND PARTNERS, LLC in connection
9 with the monies owed.

10 111. As a result of the aforementioned acts of Defendants, Plaintiffs and the Trustee are
11 entitled to a Judgment against Defendants, jointly and severally, in an amount in excess of
12 \$15,000.00.

13 112. On or about August 14, 2014, during the course of proceedings initiated to enforce
14 and collect upon the judgment in the First Case, Defendant LAS VEGAS LAND PARTNERS,
15 LLC first provided tax returns and detail financial information which revealed to Nype, for the
16 first time, that it had transferred its interest in numerous real estate parcels, as well as many
17 millions of dollars, to the entity defendants and/or Liberman and Mitchell, during the ongoing
18 pendency of the first case.

19 113. In making such transfers, LAS VEGAS LAND PARTNERS, LLC, and Defendants
20 MITCHELL and LIBERMAN have acted with the actual intent to hinder delay and to defraud
21 their creditors, including Nype, but fraudulently transferring assets to insiders and the entity
22 defendants.

23 114. The Trustee lacks an adequate remedy at law because, unless the relief sought in
24 this complaint is granted, LAS VEGAS LAND PARTNERS, LLC with the aid of the Defendants
25 herein will have succeeded in fraudulently transferring its assets to insiders and/or related entities,
26 depriving creditors of the opportunity to collect monies due and owing from LAS VEGAS LAND
27 PARTNERS, LLC.
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2 115. The Trustee has an high probability of success on the merits in this action.

3 116. The aforesaid transfer of assets to insiders and/or the entity defendants was made
4 with actual intent to hinder, delay or defraud creditors, most significantly Nype, and these
5 transfers therefore constitute fraudulent transfers in violation of NRS 112.180.

6 117. LAS VEGAS LAND PARTNERS, LLC did not receive reasonably equivalent
7 value for the transfers herein alleged.

8 118. LAS VEGAS LAND PARTNERS, LLC and its principals intended to incur or
9 reasonably should have believed they would incur debts beyond its ability to pay the same as they
10 become due, and thus the transfers at issue are transfers in violation of Nevada law.

11 119. Because of the special circumstances of this case, in which LAS VEGAS LAND
12 PARTNERS, LLC is liable for a judgment it has consistently ignored and avoided, having
13 committed fraud to avoid the judgment and its debts, and the hiding assets, and also constituting a
14 risk of further affirmative frustration of valid efforts by Nype and other creditors to collect upon
15 their claims, the Trustee is entitled to:

- 16 (1) The appointment of receiver to take possession of the assets of
17 LVLP, LLC;
- 18 (2) An injunction against further dissipation, disposition, or assignment
19 of any and all assets and property owned by LAS VEGAS LAND
20 PARTNERS, LLC;
- 21 (3) Any other relief that the circumstances may require, including a
22 declaration that the transfers in question are void, and that the assets
23 in question are subject to execution by Nype.

24 120. It has been necessary for Trustee to retain the services of an attorney to prosecute
25 this action, and Trustee is, therefore, entitled to reasonable attorneys' fees.

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THIRD CLAIM FOR RELIEF

(Civil Conspiracy)

121. The Trustee incorporates by reference paragraphs 1 through 120 as though fully set forth.

122 As alleged hereinabove, and upon information and belief, the transfer of the subject real estate and substantial monetary amounts were undertaken by Defendants with full knowledge as to the relevant circumstances and in an effort to participate in transactions in derogation of the rights of creditors.

123. The knowing and willful conduct of the entity Defendants in agreeing to receive the subject real property and act as a nominee for said LAS VEGAS LAND PARTNERS. LLC, LIBERMAN and MITCHELL constitute acts of civil conspiracy.

124. The Defendants, and each of them worked together in concerted actions with the intent to accomplish an unlawful purpose, vis a vis Plaintiffs and other creditors.

125. The purpose of the unlawful, concerted actions of Defendants was intended to, or would likely result in direct harm to the creditors of LVLP.

126. As a direct and proximate result of the aforesaid civil conspiracy, undertaken between the Defendants, Plaintiffs and the Trustee have been damaged in an amount in excess of \$15,000.00.

127. As alleged hereinabove, upon information and belief, Defendants' conduct was willful, knowing, intentional, and malicious, as a matter of law, entitling Plaintiffs and the Trustee to recover exemplary damages in an amount in excess of \$15,000.00.

128. That it has been necessary for the Trustee to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to reasonable attorneys' fees.

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FOURTH CLAIM FOR RELIEF

(Declaratory Relief)

129. The Trustee incorporates by references Paragraphs 1 through 128 as though fully set forth herein.

130. A true and ripe controversy exists as to the dispute, and declaratory relief pursuant to NRS 30.040 is necessary to declare the respective rights, responsibilities, and obligations between the parties as a consequence of Plaintiffs' judgment against LAS VEGAS LAND PARTNERS, LLC, and as relates to the various transactions undertaken by Defendants, including but not limited to transactions involving various parcels of valuable Las Vegas Real Estate.

131. For all of the reasons set forth hereinabove, Defendants have acted wrongfully and in violation of its creditors', and a direct declaration as to the invalidity of Defendants' transfers, and such should be determined and declared by the court.

132. That it has been necessary for the Trustee to retain the services of an attorney to prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

FIFTH CLAIM FOR RELIEF

(Alter Ego)

133. Plaintiff incorporates by references Paragraphs 1 through 132 as though fully set forth herein.

134. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIAS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LV VEGAS, LLC, CASINO COOLIDGE, LLC, and each of them, were and remain the alter-egos of each other; that said Defendants did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and

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2 separateness of each entity was and remains non-existent; that each such entity was and remains a
3 mere shell and naked framework which the other Defendants used and still use to conduct their
4 business affairs; that each such entity is and remains inadequately capitalized; and that an injustice
5 and fraud upon creditors will result if the theoretical separateness of the Defendant entities is not
6 disregarded and each such Defendant held liable for all relief being sought herein.

7 135. Upon information and belief, to the extent that one or more of the Defendant
8 entities is nominally owned or operated by or through LAS VEGAS LAND PARTNERS, LLC, or
9 Defendants LIBERMAN or MITCHELL with respect to one or more of the Defendant entities, which
10 entities as a practical matter exist with functional unity of ownership in said LAS VEGAS LAND
11 PARTNERS, LLC or Defendants LIBERMAN or MITCHELL, the true and factual individuality and
12 separateness of each such entity was and remains non-existent; each such entity was and remains a
13 mere shell and naked framework, which LAS VEGAS LAND PARTNERS, LLC and Defendants
14 LIBERMAN or MITCHELL utilize, through the offices of said Defendants LAS VEGAS LAND
15 PARTNERS, LLC, LIBERMAN or MITCHELL and/or through nominees and others to conduct their
16 business affairs. Each such entity is, upon information and belief, merely another nominal
17 manifestation of the business and financial affairs of LAS VEGAS LAND PARTNERS, LLC and
18 the Defendants LIBERMAN or MITCHELL, and to recognize any such separate entity would work
19 as separate and distinct from LAS VEGAS LAND PARTNERS, LLC and Defendants LIBERMAN
20 or MITCHELL, an injustice and fraud upon creditors, to the extent the theoretical or putative
21 separateness of such entity is not disregarded and said nominal Defendants held liable for all the relief
22 being sought herein.

23 136. As a matter of both statutory common law, and prior declarations of the Eighth
24 Judicial District Court, it is appropriate that the Court further determine and declare that all of the
25 aforesaid entities be held to be the Alter Egos of LAS VEGAS LAND PARTNERS, LLC and of
26 Defendants LIBERMAN or MITCHELL, and that therefore the various Defendants named herein can
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2 and should be jointly and severely liable to the Plaintiffs and Trustee with regard to all claims
3 asserted.

4 137. That it has been necessary for the Trustee to retain the services of an attorney to
5 prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

6 **WHEREFORE**, Plaintiff prays for judgment against Defendants and each of them
7 as follows:

- 8 1. For a sum in excess of \$15,000.00;
- 9 2. For exemplary damages in an amount in excess of \$10,000.00;
- 10 3. For the imposition of a constructive trust upon the various parcels of real property and
11 valuable equity ownership interests formerly owned by LAS VEGAS LAND
12 PARTNERS, LLC for the benefit of Plaintiff;
- 13 4. For an order requiring the sale of the parcels of real estate and valuable ownership
14 interest and an order directing the payment of all rents with regard to the subject real
15 property be made to the order of the Trustee herein;
- 16 5. For the Appointment of a Receiver;
- 17 6. For interest upon all damages which Plaintiffs and the Trustee recovers at the Nevada
18 Statutory rate.
- 19 7. For a declaration as to the invalidity of Defendants' transactions as regards to the
20 various valuable real estate interests and equity ownership interests formerly owned
21 by LAS VEGAS LAND PARTNERS, LLC;
- 22 8. For a determination that the Defendants are the alter egos of each other , and should
23 all be held liable to Plaintiff, jointly and severally, for the damages sought herein.
- 24 9. For a declaration that the actions by LAS VEGAS LAND PARTNERS, LLC, in
25 conjunction with the Defendants herein, to convey valuable property and monies to
26 other Defendants with the intent to deprive creditors of their ability to recover funds
27 was undertaking in a knowing, willful, intentional, and malicious manner, which
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2 under Nevada law constitute malice and is sufficient grounds to invoke the availability
3 of exemplary damages against Defendants, and each of them.

4 10. As a consequence of the willful malicious and intentional misconduct of the
5 Defendants and each of them, Plaintiffs and the Trustee are entitled to recover
6 exemplary damages from each Defendant in accordance with Nevada Law, in an
7 amount in excess of \$15,000.00, the precise amount to be proven at time of trial.

8 11. For reasonable attorneys' fees for the prosecution of this suit; and

9 12 For such other and further relief as the Court may deem just and proper.

10 DATED this 18th day of November, 2019.

11 JOHN W. MUIJE & ASSOCIATES

12
13 By: 

14 JOHN W. MUIJE, ESQ.
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CERTIFICATE OF MAILING

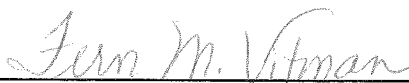
I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 18th day of November, 2019, I caused the foregoing document, **COMPLAINT IN INTERVENTION (1) CONSTRUCTIVE TRUST; (2) FRAUDULENT CONVEYANCE; (3) CONSPIRACY TO DEFRAUD; (4) DECLARATORY RELIEF; AND (5) ALTER EGO**, to be served as follows:

- ☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid addressed as follows; and/or
- ☒ By electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;
- ☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid marked certified return receipt requested addressed as follows:

Elliot S. Blut, Esq.
BLUT LAW GROUP, P.C.
300 South Fourth Street, Suite 701
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LLC

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EXHIBIT D

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Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC,
DOES I through X; DOES I through X; DOE
CORPORATIONS CASE NO: A-16-740689-
C I through X; and DOES PARTNERSHIPS I
through X,

Plaintiffs,

v.

DAVID J. MITCHELL; BARNET
LIBERMAN; LAS VEGAS LAND
PARTNERS, LLC; MEYER PROPERTY,
LTD.; ZOE PROPERTY, LLC; LEAH
PROPERTY, LLC; WINK ONE, LLC; LNE
WORK, LLC; LNE WORK MANAGER,
LLC; AQUARIUS OWNER, LLC; L VLP
HOLDINGS, LLC; MITCHELL HOLDINGS,
LLC; LIBERMAN HOLDINGS, LLC; 305
LAS VEGAS, LLC; LIVE WORKS TIC
SUCCESSOR, LLC; CASINO COOLIDGE
LLC; DOES I through ill, and ROE
CORPORATIONS I through ill, inclusive,

Defendants.

Case No.: A-16-740689-C

Dept.: XI

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez beginning on December 30, 2019, and continuing day to day, until its completion on January 7, 2020; John W. Muije of John W. Muije & Associates appeared on behalf of Russell L. Nype and Revenue Plus, LLC ("Plaintiffs") and Shelley D. Krohn, U.S. Bankruptcy Trustee ("Plaintiff Trustee"); H. Stan Johnson, James L. Edwards and Kevin M. Johnson of the law firm of Cohen, Johnson, Parker & Edwards appeared on behalf of David J. Mitchell, Las Vegas Land Partners, LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, Mitchell Holdings

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CLERK OF THE COURT

14

1 LLC, Live Works TIC Successor LLC, FC/Live Work Vegas LLC, ("Mitchell Defendants");¹
2 Brian W. Boschee of the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson
3 appeared on behalf of Defendant 305 Las Vegas, LLC²; and, Elliott S. Blut appeared on behalf of
4 Defendants Barnett Liberman and Casino Coolidge; the Court having read and considered the
5 pleadings filed by the parties; having reviewed the evidence admitted during the trial; having
6 heard and carefully considered the testimony of the witnesses called to testify and weighing their
7 credibility; having considered the oral and written arguments of counsel, and with the intent of
8 rendering a decision on all claims before the Court,³ pursuant to NRCP 52(a) and 58; the Court
9 makes the following findings of fact and conclusions of law:

11 FINDINGS OF FACT

12
13 1. This action arises from a judgment that Plaintiffs obtained on or about April 10,
14 2015, against Las Vegas Land Partners, LLC ("LVLP") in Case No. A551073. Plaintiff filed this
15 suit on July 26, 2016. The complaint was amended by the filing of an amended complaint on
16 August 21, 2017.

17 2. Plaintiff Trustee was duly appointed to act as the Trustee in the Bankruptcy Case
18 of *Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn and moved to intervene in the
19 instant action, which motion was granted on November 18, 2019. Plaintiff Trustee filed the
20 complaint in intervention on November 18, 2019.

21 3. Plaintiff Russell L. Nype ("Nype") is an adult resident of New York.

22
23
24 ¹ Given the filing of *Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn in
August 2019, the Court takes no action against Las Vegas Land Partners, LLC.

25 ² The Court granted the Rule 50(a) motion by 305 Las Vegas, LLC at the close of the
26 Plaintiffs' case as no damages against that entity were established given the nature of its conduct.

27 ³ Plaintiff asserted five claims for relief against the Defendants: 1) Constructive Trust;
28 2) Fraudulent Transfer; 3) Civil Conspiracy; 4) Declaratory Relief; and 5) Alter Ego.

1 4. Plaintiff Revenue Plus, LLC (collectively with Nype, "Plaintiffs") is a Florida
2 limited liability company.

3 5. Defendant, David J. Mitchell ("Mitchell"), is an adult resident of New York.

4 6. Defendant, Barnett Liberman ("Liberman"), is an adult resident of New York.

5 7. Defendant Mitchell Holdings, LLC ("Mitchell Holdings") is a Delaware limited
6 liability company.

7 8. Defendant LVLP Holdings, LLC ("LVLP Holdings") is a Delaware limited
8 liability company that was formed on or about November 4, 2004 by Mitchell and Liberman.

9 9. Defendant Las Vegas Land Partners ("LVLP") is a Delaware limited liability
10 company.

11 10. Mitchell and Liberman are managers of LVLP.

12 11. At all relevant times, Mitchell and Liberman were the sole owners (50/50) and
13 managers of LVLP Holdings.

14 12. At all relevant times, LVLP was owned (50/50) and managed by Mitchell and
15 Liberman.

16 13. Defendant Casino Coolidge LLC is a Nevada limited liability company. ("Casino
17 Coolidge").

18 14. Liberman is the managing member of Casino Coolidge.

19 15. Defendant Aquarius Owner, LLC ("Aquarius") is a Delaware limited liability
20 company.

21 16. Defendant Leah Property, LLC ("Leah") is a Delaware limited liability company.

22 17. Defendant Livework, LLC ("Livework") is a Delaware limited liability company.

23 18. Defendant Livework Manager, LLC ("Livework Manager"), is a Delaware limited
24 liability company.

25 19. Defendant Zoe Property, LLC ("Zoe") is a Delaware limited liability company.

26 20. Defendant Wink One, LLC ("Wink") is a Delaware limited liability company.

1 21. Defendant Meyer Property, LLC ("Meyer") is a Delaware limited liability
2 company.

3 22. Non-party Charleston Casino Partners, LLC ("Casino Partners") is a Delaware
4 limited liability company.

5 23. Defendant FC/LW Vegas, LLC ("FC/LW") is a Delaware limited liability
6 company.

7 24. Defendant LiveWorks TIC Successor, LLC ("TIC Successor") is a Delaware
8 limited liability company.

9 25. These entities are collectively referred to as the Related Entities.⁴

10 26. 305 Las Vegas, LLC ("305 Las Vegas") was created in April of 2007 for the
11 purpose through a 1031 exchange of purchasing real property located around 300 East
12 Charleston.

13 27. In 2005, Mitchell and Liberman requested Nype's assistance with finding a
14 development partner to assist them in developing certain real property in Downtown Las Vegas.

15 28. Prior to closing the transaction with Forest City, a dispute arose between LVLP
16 and Nype in late 2006/early 2007 over the amount Nype was entitled to be paid related to the
17 transaction with Forest City.

18 29. Mitchell and Liberman were fully aware that Nype was expecting to receive at
19 least two million dollars for his efforts.

20 30. Despite understanding Nype's expectations, Mitchell and Liberman only set aside
21 \$430,000.

22 31. Shortly after setting aside that amount, Mitchell and Liberman took personal
23 distributions from LVLP in excess of thirteen million dollars.

24
25
26 ⁴ For purposes of the term "Related Entity" the following are included: Las Vegas Land
27 Partners, LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC,
28 LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC,
LiveWorks TIC Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC.

1 32. On November 2, 2007, LVLP and two other entities⁵ sued Nype seeking primarily
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking
3 compensation for services rendered.

4 33. In December 2014, Leah sold certain real property to Casino Coolidge for
5 \$1,000,000. Mitchell and Liberman caused Leah to distribute sales proceeds in the amount of
6 \$341,934.47 directly to themselves, rather than Leah's parent company, LVLP. Plaintiff has not
7 established that given the market conditions at the time that Mitchell and Liberman sold the Leah
8 Property without obtaining reasonably equivalent value in exchange.

9 34. After obtaining judgment on the counterclaim in 2015, Nype engaged in
10 significant attempts to collect on the Judgment from LVLP.

11 35. Those efforts resulted in recovery of approximately \$10,000.

12 36. Between 2007 and 2016, Mitchell and Liberman distributed to themselves a total
13 of \$15,148,339 from the Related Entities.

14 37. These distributions were at times that Mitchell and Liberman were fully aware of
15 Nype's claims.

16 38. The distributions caused and/or contributed to the Related Entities' insolvency
17 and/or inability to pay their debts as they became due.

18 39. The evidence also demonstrates that Mitchell, Liberman and the Related Entities
19 engaged in conscious, concerted and ongoing efforts to conceal, hide, convey, keep secret and/or
20 divert millions of dollars in assets away from Nype and/or other creditors.

21 40. The evidence also demonstrates that Mitchell, Liberman and the Related Entities
22 engaged in conscious, concerted and ongoing efforts to ensure that funds and/or assets that would
23 otherwise be available to Nype to satisfy his claims (and Judgment) were kept away from Nype.

24
25
26
27 ⁵ The other plaintiffs in that case were LiveWork LLC and Zoe Properties, LLC, neither of
28 which were named as counterdefendants.

1 41. The evidence demonstrates that Mitchell, Liberman and the Related Entities
2 distributed in excess of \$15,000,000 in funds that should have been available to satisfy Nype's
3 claims/Judgment.

4 42. Nype's disclosure of the tax returns and its own consultant's report⁶ on or about
5 April 25, 2014, in A551073, are the latest date of discovery for purposes of NRS 112.230(1)(a).⁷
6

7 43. David Mitchell was not credible.⁸ The failure of Mitchell to meaningfully
8 participate in discovery until the eve of trial and the failure to produce documents which should
9 have been in his possession leads the Court to conclude that if those documents had been
10 produced they would have been adverse to Mitchell.

11 44. At all relevant times, each of the Related Entities was wholly owned and managed
12 by LVLP or LVLP Holdings.

13 45. At all relevant times, each of the Related Entities was beneficially owned,
14 controlled, and managed by Mitchell and Liberman.

15 46. One or more of the Related Entities was formed with an initial capitalization of
16 just \$10.
17
18
19

20 ⁶ The report is a part of Exhibit 90079.

21 ⁷ That statute provides in pertinent part:

22 1. A claim for relief with respect to a fraudulent transfer or obligation under this chapter is
23 extinguished unless action is brought:

24 (a) Under paragraph (a) of subsection 1 of NRS 112.180, within 4 years after the transfer was
25 made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was
or could reasonably have been discovered by the claimant;

26 ⁸ The explanation by Mitchell surrounding the creation of retention agreements with the
27 CPA Sam Spitz signed in different styles and ink is additional information which leads the Court
28 to believe Mitchell is not credible. (Exhibits 60032-60036).

1 47. At all relevant times, each of the Related Entities was treated by Mitchell and
2 Liberman as a disregarded entity of LVLP Holdings for tax purposes and all of the Related
3 Entities filed one combined tax return.

4 48. Except with respect to Livework Manager and Casino Coolidge, none of these
5 entities had its own bank account. Mitchell caused each of the Related Entities to use the same
6 bank accounts to deposit and disburse funds, including distributions to Mitchell and Liberman.

7 49. At all relevant times, Mitchell and Liberman caused each of the Related Entities to
8 use the same financial and accounting records, which are not distinguishable by entity. Each of
9 the Related Entities' financial and accounting records are not distinguishable by entity.

10 50. The LVLP accounting records include a few Mitchell and Liberman personal
11 transactions and postings commingled from multiple entities.

12 51. Mitchell and Liberman caused each of the Related Entities to use the same general
13 ledger to post all entries under the name of "Las Vegas Land Partners".

14 52. Mitchell, Liberman and the Related Entities commingled funds, including personal
15 loans from various banks which are included in the LVLP accounting records and general ledger.

16 53. Mitchell and Liberman also used journal entries to post commingled transactions
17 for themselves and the Related Entities.

18 54. In 2016, the Related Entities stopped using bank accounts and instead began using
19 journal entries to post entries apparently transacted personally by Mitchell.

20 55. As a result of Mitchell and Liberman's domination, influence and control over the
21 Related Entities, the individuality and separateness of the Related Entities—vis-à-vis themselves
22 and Mitchell and Liberman—was and remains nonexistent as evidenced by the commingling of
23 funds, transactions, revenues, expenses, assets, liabilities and contributed capital.

24 56. The manner in which Mitchell and Liberman operated the Related Entities makes
25 it virtually impossible to identify transactions by purpose and/or entity.

26 57. The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities
27 commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;
28

1 (c) Mitchell, Liberman and the Related Entities distributed funds to Mitchell and Liberman as
2 individuals without regard to parent entities; (d) Mitchell, Liberman and the Related Entities
3 treated assets of the other entities as their own; and (e) the Related Entities failed to observe
4 corporate or LLC formalities.

5 58. The evidence demonstrates that the Related Entities: (a) are and were influenced
6 and governed by Mitchell and Liberman; (b) there is such unity of interest and/or ownership that
7 Mitchell, Liberman and the Related Entities are inseparable from the other; and (c) the facts are
8 such that adherence to the fiction of separate entities would, under the circumstances, sanction a
9 fraud or promote injustice.

10 59. Mitchell, Liberman and the Related Entities have made distributions to avoid
11 satisfying Nype's claims and Judgment.

12 a. When Leah Property sold certain real property to Casino Coolidge on or
13 about December 17, 2014, and did not transfer the funds to LVLP;

14 b. When Mitchell and Liberman took personal distributions from the Related
15 Entities, between 2007 and 2016, totaling \$15,148.339.

16
17 60. In determining that these distributions were made with the actual intent to hinder,
18 delay or defraud creditors and Nype, the Court notes, among other things, the following:

19 a. They were made to "insiders" or other entities of which Mitchell and
20 Liberman own or control (in whole or in part);

21 b. They were made at times when Mitchell and Liberman were fully aware of
22 Nype's claims, Judgment and/or Nype's intent to sue for the amounts owed to him.

23 c. The distributions rendered or contributed to LVLP's and/or the Related
24 Entities' insolvency, and left LVLP and/or the Related Entities unable to pay their debts as they
25 became due;

1 d. Mitchell, Liberman and the Related Entities attempted to conceal the
2 distributions and their assets, through their discovery misconduct in this matter, which required
3 enormous and expensive effort on Nype's part to attempt to obtain full and proper disclosure; and

4 e. Mitchell, Liberman and the Related Entities removed or concealed assets.

5 61. If any findings of fact are properly conclusions of law, they shall be treated as if
6 appropriately identified and designated.
7

8 CONCLUSIONS OF LAW

9 1. In Nevada, there are three general requirements for application of the alter ego
10 doctrine: (1) the corporation must be influenced and governed by the person asserted to be the
11 alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the
12 other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity
13 would, under the circumstances, sanction fraud or promote injustice." *Polaris Indus. Corp. v.*
14 *Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987).
15

16 2. Nevada recognizes application of the alter ego doctrine in reverse, in which a
17 creditor is permitted to reach "the assets of a corporation to satisfy the debt of a corporate insider
18 based on a showing that the corporate entity is really the alter ego of the individual." *Loomis*,
19 116 Nev. at 903, 8 P.3d at 846.
20

21 3. Application of the alter ego doctrine in reverse "is appropriate where the particular
22 facts and equities show the existence of an alter ego relationship and require that the corporate
23 fiction be ignored so that justice may be promoted." *Id.*, at 904, 8 P.3d at 846.

24 4. The Court, concludes that: (a) Mitchell, Liberman and the Related Entities
25 commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;
26 (c) Mitchell, Liberman and the Related Entities committed unauthorized diversion of funds; (d)
27
28

1 Mitchell, Liberman and the Related Entities treated assets of the other entities as their own; and
2 (e) the Related Entities failed to observe corporate and LLC formalities.

3 5. The Court further concludes the evidence demonstrates that the Related Entities:
4 (a) are and were influenced and governed by Mitchell and Liberman; (b) there is such unity of
5 interest and/or ownership that Mitchell, Liberman and the Related Entities are inseparable from
6 the other; and (c) the facts are such that adherence to the fiction of separate entities would, under
7 the circumstances, sanction a fraud or promote injustice.

8
9 6. Justice and equity require that the Court impose alter ego liability on Mitchell,
10 Liberman and the Related Entities.

11 7. Nype has proven, by a preponderance of the evidence his claim for alter ego,
12 establishing that Mitchell, Liberman, and each of the Related Entities, is the alter ego of LVLP
13 and each other.

14
15 8. Nype has not proven, by a preponderance of the evidence, his claim for alter ego
16 that Mitchell Holdings is the alter ego of Mitchell.

17 9. Mitchell, Liberman and each of the Related Entities are jointly and severally liable
18 on Nype's Judgment and the damages, attorney's fees and costs awarded in this action.

19 10. Prior to September of 2015, Nype had reason to know that the limited transfers
20 were transfers made by debtors under the UFTA, that the transfers rendered debtors insolvent (or
21 contributed thereto) or the facts and circumstances upon which this Court utilized in determining
22 that the transfers were made with the actual intent to hinder, delay or defraud creditors (including
23 Nype).
24
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1 11. Nype has proven, by a preponderance of the evidence his claims for fraudulent
2 transfer, including that certain of the distributions constitute fraudulent transfers within the
3 meaning of NRS 112.180(1)(a).⁹

4 12. Certain of those distributions were made outside the limitations period under NRS
5 112.230(1).

6 13. Nevada's Uniform Fraudulent Transfer Act provides an equitable remedy for
7 creditors affected by a fraudulent transfer, but nothing more. *Cadle Co. v. Woods & Erickson,*
8 *LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015).

9 14. Nype has proven by a preponderance of the evidence that he suffered damages in
10 the amount of \$341,934.47 as a result of the fraudulent transfer of the proceeds of the Leah
11 transaction with Casino Coolidge directly to Liberman and Mitchell, rather than to Leah's parent
12 LVLP.
13

14 15. The earlier transfers are barred by the limitations period for purposes of the
15 fraudulent transfer claim, only.

16 16. Nype has proven by a preponderance of the evidence that he suffered special
17 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the
18 total amount of \$4,493,176.90.¹⁰

19 17. Plaintiff cannot recover on a civil conspiracy claim (or accessory liability) for
20 allegations arising out of NRS Chapter 112 against a nontransferor. *Cadle Co. v. Woods &*
21 *Erickson, LLP*, 131 Nev. 114 at 120, 345 P.3d 1049 (2015).
22

23
24
25 ⁹ The Court is cognizant of the possibility of duplicative awards given the various claims
for relief.

26 ¹⁰ The Court has previously evaluated the *Brunzell* factors in connection with the sanctions
27 order which has now been satisfied. See 12/26/19 filing. That evaluation is incorporated by
reference.
28

1 18. Independent of NRS Chapter 112, to prove a civil conspiracy, Plaintiff must prove
2 "a combination of two or more persons who, by some concerted action, intend to accomplish a
3 lawful objective for the purpose of harming another, and damage results from the act or acts."
4 *Hilton Hotels vs. Butch Lewis Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).

5 19. The Court concludes that the evidence demonstrates that:

6 a. Mitchell and Liberman, engaged in conscious, concerted and ongoing
7 efforts to conceal, hide, convey, keep secret and/or distribute millions of dollars in assets away
8 from Nype;

9 b. Mitchell and Liberman received distributions from LVLP and the Related
10 entities;

11 c. Mitchell, fabricated and backdated evidence to facilitate the destruction
12 and/or concealment of material financial evidence by his agent that would have greatly assisted
13 Nype's case.

14 d. But for Nype's pretrial discovery,¹¹ the fabrication of evidence would not
15 have been uncovered.

16 20. Nype has proven his claim of civil conspiracy, by a preponderance of the evidence
17 against Mitchell and Liberman.

18 21. Plaintiff has not established by a preponderance of the evidence the elements of
19 civil conspiracy separate and apart from the distributions and fabrication of evidence.

20 22. Plaintiff has established damages on the civil conspiracy claim in the amount of
21 \$15,148.339.

22 23. Nype has not demonstrated that punitive damages are appropriate in this matter.

23
24
25
26 ¹¹ The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is
27 instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at
28 1391-3 (1998).

1 24. Nype is entitled to recover his attorney's fees as special damages as he was
2 successful on his claim for civil conspiracy in the total amount of \$4,493,176.90.

3 25. Nype has not established a claim for constructive trust given the current state of
4 title of the remaining parcels in which the Related Entities hold their interest.

5 26. Mitchell, Liberman, and the Related Entities' actions and inactions have caused
6 Nype damages in the total amount of \$19,641,515.90.¹²

7 27. Nype may also file a post-trial motion if appropriate, for fees and costs not proven
8 during the trial as special damages.

9 28. Given the findings and conclusion no further relief on the Declaratory Relief claim
10 is appropriate.

11 29. If any conclusions of law are properly findings of fact, they shall be treated as if
12 appropriately identified and designated.

13 Based upon the foregoing Findings of Fact and Conclusions of Law:

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
15 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer
16 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,
17 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC
18 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent
19 conveyance claim in the amount of \$4,835,111.37.¹³

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
21 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell and Liberman on
22

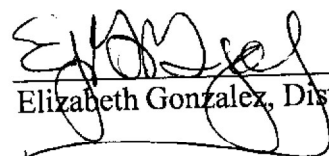
23
24
25
26 ¹² This is the total amount of damages which is not duplicated among the various claims for
27 which the Court has made an award.

28 ¹³ These damages are duplicated in the civil conspiracy judgment.

1 the civil conspiracy claim in the amount of \$19,641,515.90.

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
3 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer
4 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,
5 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC
6 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the alter ego claim in
7 the amount of the underlying judgment in A551073.

8
9 DATED this 17th day of January, 2020.

10
11 
12 Elizabeth Gonzalez, District Court Judge
13

14 **Certificate of Service**

15 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of
16 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth
17 Judicial District Court Electronic Filing Program.

18 *If indicated below, a copy of the foregoing Scheduling Order was also:*

19 ☐ Placed in the Attorney(s) Folder on the 1st Floor of the RJC for;

20 ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at
21 their last known address(es):

22
23 
24 Dan Kutinac
25
26
27
28

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

BARNET LOUIS LIBERMAN,

Debtor.

Case No. 21-70611-reg

Chapter 7

-----X
RUSSELL NYPE and REVENUE PLUS, LLC,

Plaintiffs,

Adv. Proc. No. 21-8123-reg

v.

BARNET LOUIS LIBERMAN,

Defendant.
-----X

MEMORANDUM DECISION AND ORDER
DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

In this adversary proceeding, the Plaintiffs, Russell Nype and Revenue Plus, LLC (together “Nype” or “Plaintiffs”) are seeking, under 11 U.S.C. § 523(a)(2)(A) and (a)(6), to except from the Debtor’s discharge liability stemming from a pre-petition judgment entered against the Debtor and others by a Nevada state court (“Nevada Court”). That judgment was supported by Amended Findings of Fact and Conclusions of Law, dated January 17, 2020, which the Nevada Court entered after a trial on the merits. *See* District Court, Clark County, Nevada, Amended Findings of Fact and Conclusions of Law, Case No. A-16-740689-C, Jan. 17, 2020 (“Nevada Judgment”). The Nevada Judgment has three separate elements: an award in the amount of \$4,835,111.37 attributed to fraudulent conveyances under Nevada law (“Fraudulent Conveyance Award”); an award in the amount of \$19,641,515.90 attributed to a finding of civil conspiracy under Nevada law (“Civil Conspiracy Award”); and a finding (“Alter Ego Finding”)

that the Debtor and others are liable, under a Nevada alter ego theory for a prior judgment (“LVLP Judgment”) in the amount of approximately \$2,600,000, entered against an entity, Las Vegas Land Partners LLC (“LVLP”), owned and controlled by the Debtor and his business partner, David J. Mitchell (“Mitchell”).

Before the Court is Plaintiffs’ motion for partial summary judgment seeking judgment as a matter of law solely as to the Fraudulent Conveyance Award. Relying on the doctrine of collateral estoppel, the Plaintiffs argue that the findings and conclusions made in the Nevada Judgment are sufficient to establish the elements of non-dischargeability under § 523(a)(2)(A) and the Debtor should be precluded from presenting any defense on that claim. The Debtor argues that the Nevada Judgment does not contain the necessary specificity with respect to the elements of the § 523(a)(2)(A) asserted here and the Plaintiffs’ motion should be denied.

Based on the record before it today, the Court cannot give any preclusive effect to the Nevada Judgment. The Court cannot find, based on the current record, that the Nevada Judgment is a valid and enforceable judgment. The litigation commenced by Nype, which resulted in the Nevada Judgment, was commenced in aid of collecting on Nype’s prior judgment against LVLP, the LVLP Judgment (“Collection Litigation”). Subsequent to commencement of the Collection Litigation, but prior to entry of the Nevada Judgment, LVLP filed for relief under chapter 7 of the Bankruptcy Code. LVLP was a named defendant in the Collection Litigation. Upon LVLP’s bankruptcy filing, the fraudulent conveyance claims asserted in the Collection Litigation became property of the LVLP estate. The Collection Litigation continued as against all defendants except LVLP, and the LVLP chapter 7 trustee intervened as a co-plaintiff with Nype as the proper party to assert the fraudulent conveyance claims on behalf of the LVLP estate.

In a recent decision, the Bankruptcy Appellate Panel of the Ninth Circuit found that “postpetition prosecution of a fraudulent transfer claim against nondebtor parties violates § 362(a)(1).” *Koeberer v. California Bank of Commerce et al. (In re Koeberer)*, BAP No. NC-21-1078-FBS, Bk. No. 20-110514, 2021 WL 5371142 at *1 (B.A.P. 9th Cir. Nov. 18, 2021). If, in fact, the Nevada Judgment was entered in violation of the stay imposed by the LVLP bankruptcy filing, then it cannot be given collateral estoppel effect here.

The Motion is denied without prejudice.

FACTS

Sometime in 2005 the Debtor and his business partner David Mitchell asked Nype to help them find a partner to assist their company LVLP with the development of certain real property in Downtown Las Vegas.¹ (Nevada Judgment at 4, ¶27). In late 2006 or early 2007, a dispute arose between LVLP and Nype over Nype’s fee. (Nevada Judgment at 4, ¶28). LVLP sued Nype in late 2007 seeking a declaratory judgment that it owed Nype no fee, and Nype counterclaimed seeking compensation for services rendered.

On April 10, 2015, the Nevada Court entered a judgment against LVLP in favor of Nype in the amount of \$2,608,797 plus interest and costs. (District Court, Clark County, Nevada, Findings of Fact, Conclusions of Law and Decision, Case No. 07A551073, Mar. 26, 2015 (“LVLP Decision”); District Court, Clark County, Nevada, Judgment, Case No. 07A551073, Apr. 10, 2015 (“LVLP Judgment”)).

¹ Initially, Nype worked for LVLP through First Wall Street Capital International (“FWS”), but FWS and Nype had a falling out over Nype’s fee share agreement for the LVLP work resulting in FWS terminating its relationship with Nype who nonetheless continued working on the deal for LVLP (LVLP Decision at 3, ¶¶ 14-37).

Nype collected only \$10,000 on the LVLP Judgment. (Nevada Judgment at 5, ¶¶ 34, 35).

In 2017, Nype sued Mitchell, Liberman, LVLP and several related entities (“Related Entities”),² alleging that the defendants in that action engaged in an “Asset Protection Scheme” for the purpose of “secreting, hiding, and conveying away [from LVLP] valuable assets that were available to satisfy creditors [of LVLP] such as [Nype]” (District Court, Clark County, Nevada, Case No. A-16-740689-B, Amended Complaint, dated August 21, 2017, ¶56) (“Collection Litigation”). The Collection Litigation asserted claims for constructive trust, fraudulent conveyance, civil conspiracy, declaratory relief, and alter ego.

In August 2019, while the Collection Litigation was pending, LVLP filed a petition under chapter 7 of the Bankruptcy Code. (Bankr. D. Nev., Case No. 19-15333-mkn, “LVLP Bankruptcy”). After the LVLP Bankruptcy was filed, the Nevada Court continued the Collection Litigation as to the Debtor, Mitchell and the Related Entities, but not as to LVLP.

On October 21, 2019, the chapter 7 trustee appointed in the LVLP Bankruptcy filed an application to retain John W. Muije & Associates (“Muije & Associates”) on a contingency fee basis as her special counsel to prosecute the fraudulent transfer claims asserted in the Collection Litigation. The retention application specifically recognized that the fraudulent transfer claims in the Collection Litigation were property of the LVLP Bankruptcy estate. (LVLP Bankruptcy, Dkt #28, Retention Application, ¶ 6).³ By order of the Nevada bankruptcy court, dated October 31,

² The “Related Entities,” as the Nevada Court noted, include: LVLP; Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC Successor LLC, FC/LiveWork Vegas LLC, and Casino Coolidge LLC.

³ The retention application recognized that Nype’s claim in the LVLP Bankruptcy represented approximately 97% of the creditor body. The retention agreement attached to the retention application states: “Subject to Bankruptcy Court approval, 50% of any funds collected from the Defendants as a

2019, Muije & Associates was retained to represent the LVLP trustee as to the fraudulent conveyance claims. Muije & Associates continued to represent Nype as co-plaintiff on the remainder of the claims in the Collection Litigation. (LVLP Bankruptcy, Dkt #35). The LVLP trustee intervened as a plaintiff in the Collection Litigation and filed a “complaint in intervention” on November 18, 2019. The LVLP Bankruptcy case is still open.⁴

On January 17, 2020, after a trial on the merits in the Collection Litigation, the Nevada state court entered Amended Findings of Fact and Conclusions of Law which included a judgment against Mitchell, Liberman and the Related Entities in the total amount of \$19,641,515.90 (“Nevada Judgment”).

PROCEDURAL HISTORY

On April 1, 2021, Barnet Louis Liberman (the “Debtor” or “Liberman”) filed a petition for relief under chapter 11 of the Bankruptcy Code. The case was converted to chapter 7 on June 28, 2021. On August 24, 2021, the Plaintiffs filed a proof of claim in this case in the amount of \$19,664,231.90 based on the Nevada Judgment. Thereafter Plaintiffs filed a complaint seeking non-dischargeability of the \$19,641,515.90 claim under §§ 523(a)(2)(A) and 523(a)(6) of the Bankruptcy Code. On September 23, 2021, Plaintiffs filed the instant motion for partial summary judgment on the § 523(a)(2)(A) claim with regard only to the \$4,835,111.37 Fraudulent Conveyance Award.

result of the State Court Litigation will be the property of [Nype] and 50% will be the Property of the [LVLP Bankruptcy estate].”

⁴ As noted by Nype in the summary judgment motion, “[t]his Court is permitted to take judicial notice of publicly filed documents such as those filed on the dockets of other courts.” (Motion for Summary Judgment, Dkt #12, note 1).

DISCUSSION

The Plaintiffs' entire motion is premised upon this Court applying collateral estoppel to the Nevada Judgment. In order to apply collateral estoppel to the Nevada Judgment, the judgment must be valid and enforceable. *See In re Dabrowski*, 257 B.R. 394 (Bankr. S.D.N.Y. 2001). Actions taken in violation of the stay imposed by § 362 of the Bankruptcy Code are void, not merely voidable. *See Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994) (citing *48th St. Steakhouse, Inc. v. Rockefeller Grp., Inc (In re 48th St. Steakhouse, Inc.)*, 835 F.2d 427, 431 (2d Cir. 1987)); *Hillis Motors, Inc v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 586 (9th Cir. 1993). The Bankruptcy Appellate Panel for the Ninth Circuit recently held that a creditor's continuation of a state court fraudulent conveyance action against non-debtor entities was a violation of the automatic stay, even though the debtor was separated out from the action. *Koeberer v. California Bank of Commerce et al. (In re Koeberer)*, BAP No. NC-21-1078-FBS, Bk. No. 20-110514, 2021 WL 5371142 at *5-6 (B.A.P. 9th Cir. Nov. 18, 2021) (citing *FDIC v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125 (2d Cir. 1992)). This Court takes judicial notice of the docket in the LVLP Bankruptcy and notes that there is no order granting relief from stay to allow the Collection Litigation to proceed. In light of this fact, and in light of *In re Koeberer*, this Court cannot find, based on the current record, that the Nevada Judgment is a valid and enforceable judgment entitled to collateral estoppel effect.⁵

⁵ Assuming Plaintiffs are able to supplement the record or otherwise get past the issue raised here, the Court has concerns with Nype's standing to assert a claim against the Debtor based on the Fraudulent Conveyance Award. The LVLP trustee intervened in the Collection Litigation as the proper party plaintiff entitled to assert the fraudulent conveyance claims on behalf of the LVLP estate. Although Nype may benefit from any distribution in the LVLP bankruptcy, the Fraudulent Conveyance Award, it appears, is property of the LVLP bankruptcy estate, not Nype. In addition, on the merits of the collateral estoppel argument, the Court has concerns with the Nevada Judgment's failure to make any specific findings as to the Debtor's individual actions and the Debtor's individual intent to defraud, as opposed to collective findings made against the Debtor as part of a larger group of defendants.

CONCLUSION

The Plaintiffs' motion for partial summary judgment is denied without prejudice. The pre-trial conference in this matter is restored to the Court's calendar on December 20, 2021 at 9:30 a.m for further proceedings consistent with this Memorandum Decision.

So ordered.

**Dated: Central Islip, New York
December 3, 2021**



A handwritten signature in black ink, appearing to read "Robert E. Grossman".

**Robert E. Grossman
United States Bankruptcy Judge**

EXHIBIT F

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Facsimile: (702) 892-0122
Lenard E. Schwartzer, Esq.
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(Admitted Pro Hac Vice)
Counsel to Russell Nype and
Revenue Plus LLC, Judgment Creditors

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Stuart I. Gordon, Esq.
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Co-Counsel to Russell Nype and
Revenue Plus LLC, Judgment Creditors

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re BARNET LOUIS LIBERMAN, <div style="text-align: right;">Debtor.</div>	Case No. 8-21-70611-REG Chapter 11 Adversary Proceeding No.: 21-8123-reg
<div style="text-align: right;">Plaintiffs,</div> vs. BARNET LOUIS LIBERMAN <div style="text-align: right;">Defendant.</div>	DECLARATION OF SHELLEY D. KROHN IN SUPPORT OF MOTION FOR RECONSIDERATION OF MOTION FOR PARTIAL SUMMARY JUDGMENT RE COMPLAINT FOR DETERMINATION OF DISCHARGEABILITY OF JUDGMENT DEBT OR RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT Hearing Date: Hearing Time:

SHELLEY D. KROHN, being duly sworn, states:

I am over the age of 18 years and state the following based on personal knowledge.

1. I am the duly appointed and acting Ch. 7 trustee in the bankruptcy case of Las Vegas Land Partners, LLC (“LVLP”) pending in the United States Bankruptcy Court for the District of Nevada (the “Nevada Bankruptcy Court”).

2. As Trustee of LVLP, I sought the authority of the Nevada Bankruptcy Court to employ John W. Muije & Associates (“Muije”) as my special counsel to prosecute the claims belonging to the bankruptcy estate of LVLP in the Eighth Judicial District Court (the “State Court”), Case No. A-16-740689-B, entitled *Russell Nype and Revenue Plus, LLC et al. vs. David J. Mitchell, Barnet Liberman, Las Vegas Land Partners, LLC et al.* (the “State Court Litigation”).

3. The Application to employ Muije informed the Nevada Bankruptcy Court that Russell Nype and I had agreed that any assets or funds collected from the Defendants would be divided equally between Russell Nype and the LVLP Bankruptcy Estate.

4. The Nevada Bankruptcy Court authorized the employment of Muije as requested, including the terms stated in the Application.

5. In the State Court Litigation, a motion for me to intervene was filed and granted.

6. After my intervention in the State Court Litigation, all claims belonging to Russell Nype, Revenue Plus, LLC and the Bankruptcy Estate of LVLP were tried and a Judgment was entered in favor of Plaintiffs and against Defendants

7. I am aware of the pending Adversary Proceeding No. 21-8123-reg (the “Adversary Proceeding”) seeking to determine the dischargeability of the debt owed pursuant to the Judgment entered in the State Court Litigation in the United States Bankruptcy Court for the Eastern District of New York.

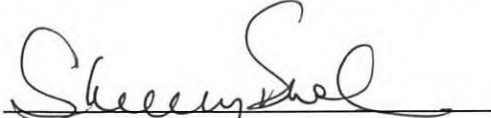
8. I have read this Court’s MEMORANDUM DECISION AND ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT entered in the Adversary Proceeding No. 21-8123-reg (the “Adversary Proceeding”).

9. I ratify the prosecution of the Adversary Proceeding pursuant to FRCP Rule 17(a)(3), I authorize the continued prosecution of the Adversary Proceeding, and I agree to be bound by its results.

10. If this Court determines that I am a necessary party or the real party in interest for the Adversary Proceeding, I am ready and willing to intervene as a plaintiff in the pending Adversary Proceeding as an additional plaintiff.

11. If this Court determines that it is necessary, I am ready and willing to join in a motion seeking an order from the Nevada Bankruptcy Court annulling the automatic stay to the extent this Court believes it is necessary in order for the Judgment in the State Court Litigation to be valid.

Dated: December 14, 2021


Shelley D. Krohn

Prepared By:

/s/ Lenard E. Schwartz
Lenard E. Schwartz, Esq.
Schwartz & McPherson Law Firm

EXHIBIT G

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 8-21-70611-reg

4 Adv. Case No. 8-21-08123-reg

5 - - - - - x

6 In the Matter of:

7

8 BARNET LOUIS LIBERMAN,

9

10 Debtor.

11 - - - - - x

12 NYPE, ET AL.,

13 Plaintiffs,

14 v.

15 LIBERMAN,

16 Defendant.

17 - - - - - x

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Page 2

1 United States Bankruptcy Court
2 290 Federal Plaza
3 Central Islip, New York 11722
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5 January 24, 2021
6 10:20 AM
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21 B E F O R E :
22 HON ROBERT E. GROSSMAN
23 U.S. BANKRUPTCY JUDGE
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25 ECRO: UNKNOWN

1 HEARING re motion to lift stay.

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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3 ROSEN & ASSOCIATES

4 Attorneys for Debtor

5 747 Third Avenue

6 New York, NY 10017

7

8 BY: SANFORD ROSEN (TELEPHONICALLY)

9

10 SCHWARTZER & MCPHERSON LAW FIRM

11 Attorneys for Russell Nype

12 2850 South Jones Boulevard, Suite 1

13 Las Vegas, NV 89146

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15 BY: LENARD E. SCHWARTZER (TELEPHONICALLY)

16

17 RIVKIN RADLER

18 Attorneys for Russell Nype

19 926 RXR Plaza

20 West Tower

21 Uniondale, NY 11556

22

23 BY: MATTHEW SPERO (TELEPHONICALLY)

24

25

1 HOUMAND LAW FIRM, LTD.

2 Attorneys for Shelley Krohn, Chapter 7 Trustee

3 9205 West Russell Road

4 Building 3, Suite 240

5 Las Vegas, Nevada 89148

6

7 BY: JACOB HOUMAND (TELEPHONICALLY)

8

9 ROSENBERG & ESTIS, P.C.

10 Attorneys for 3form Lender LLC and 305-421 LLC

11 733 Third Avenue

12 New York, NY 10017.

13

14 BY: JOHH GIAMPOLO (TELEPHONICALLY)

15

16 SHEPPARD MULLIN

17 Attorneys for Access Bank

18 30 Rockefeller Plaza

19 New York, NY 10112

20

21 BY: MIKE DRISCOLL (TELEPHONICALLY)

22

23

24

25

1 WEINBERG GROSS & PERGAMENT

2 Trustee

3 400 Garden City Plaza, Suite 403

4 Garden City, NY 11530

5

6 BY: MARC PERGAMENT (TELEPHONICALLY)

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1 P R O C E E D I N G S

2 CLERK: Next matter, Nype et al. v. Liberman,
3 Adversary No. 21-8123, and Barnet Louis Liberman, Adversary
4 No. 21-70611. Please state your appearance.

5 MR. SCHWARTZER: Leonard Schwartzer appearing for
6 Russell Nype and his company.

7 MR. SPERO: Good morning, Your Honor. Matthew
8 Spero from Rivkin Radler. We are local counsel for Mr.
9 Schwartzer to Russell Nype and Revenue Plus.

10 THE COURT: Good morning.

11 MR. ROSEN: Good morning, Your Honor. Sanford
12 Rosen, Rosen & Associates, for the Debtor.

13 THE COURT: Good morning.

14 MR. HOUMAND: Good morning, Your Honor. Jacob
15 Houmand appearing on behalf of Shelley Krohn, Chapter 7
16 Trustee in the Las Vegas Land Partners, which is pending in
17 Las Vegas, Nevada Bankruptcy Court.

18 THE COURT: Good morning.

19 MR. PERGAMENT: Good morning, Marc Pergament,
20 Weinberg Gross & Pergament, attorneys for the Trustee of Mr.
21 Liberman. I am also the Trustee.

22 THE COURT: Good morning. Okay. Is that
23 everybody on here I guess?

24 MR. GIAMPOLO: Your Honor, I was going to make an
25 appearance. Good morning, Your Honor. John Giampolo,

1 Rosenberg & Estis, for creditor 3form Lender LLC and 305-421
2 LLC.

3 THE COURT: Good morning.

4 MR. DRISCOLL: Good morning, Your Honor. Mike
5 Driscoll of Sheppard Mullin on behalf of Access Bank. Thank
6 you, Your Honor.

7 THE COURT: Good morning. Okay. Where do we
8 begin. Where do we begin. Let's start with you guys with
9 the motion to lift stay made by Nype counsel. The Court
10 admit him, Mr. Nype, to go back to the Bankruptcy Court in
11 Nevada for a determination that the stay -- that the stay in
12 place at the time, assuming there was, can be annulled --
13 well, I won't say nunc pro tunc, but in essentially nunc pro
14 tunc, arguing that in the Ninth Circuit, the Ninth Circuit
15 law would be that would permit, if the Judge felt it was
16 appropriate, to find that the stay, if there was, was lifted
17 essentially that permitted consideration of the action in
18 the Nevada District Court with the intent to then bring that
19 decision back here and part and parcel of that, have me
20 reconsider my decision with regard to the collateral
21 estoppel effect of the Nevada judgment.

22 So assuming that's close to what we're arguing
23 about, or you are oral arguing, I'll ask the movant here to
24 explain to me the rationale why the Court -- why a stay
25 should be lifted in this case.

1 MR. SCHWARTZER: Your Honor, Leonard Schwartzer
2 speaking. I just want to point out to the Court that the
3 motion to lift stay only becomes necessary if we cannot
4 convince you that the judgment is valid based upon the
5 present circumstances, but I'm perfectly willing to argue
6 the motion to lift stay now.

7 The motion to lift stay requests this Court to
8 allow the Nevada court to annul the automatic stay in the
9 Las Vegas Land Partners case because at the time and as
10 obviously you are aware from the record, in the Las Vegas
11 Land Partners case, the Bankruptcy Court authorized the
12 trustee to employ John Nucci, who was Mr. Nype's counsel in
13 the state court action, to proceed on behalf of the trustee
14 and the Las Vegas Land Partners bankruptcy estate to proceed
15 with this litigation against Mr. Liberman, Mt. Mitchell, and
16 an assortment of their entities to recover claims against
17 them, including the fraudulent transfer claim that belonged
18 to the bankruptcy estate, the alter ego claim that belonged
19 to the bankruptcy estate, and the civil conspiracy claim
20 which we would assert belong to Mr. Nype at the same time.

21 THE COURT: Hold it, hold it, hold it. Just to be
22 technically clear, you're not arguing that the Bankruptcy
23 Court did anything with regard to a creditor proceeding.
24 You're arguing that the Bankruptcy Court permitted I think
25 your firm if I'm not wrong, maybe it's some other firm, but

1 a law firm to act on behalf of the bankruptcy trustee in the
2 case out there.

3 There was no determination of the rights of any
4 creditors to proceed, but there was determination that you
5 could represent simultaneously -- well, maybe not
6 simultaneously, but you represent the estate. That was the
7 only thing the Bankruptcy Court did as I read the papers.

8 MR. SCHWARTZER: I agree. The Court order
9 authorized Mr. -- well, first of all, Mr. Nucci is not in my
10 firm. He's been a --

11 THE COURT: I'm sorry.

12 MR. SCHWARTZER: He's a state court litigation
13 attorney who I know, and he referred Mr. Nype to me when the
14 Las Vegas Land Partners bankruptcy case was filed --

15 THE COURT: Okay.

16 MR. SCHWARTZER: -- to look at this. And the
17 trustee, Shelley Krohn, who at that time -- Ms. Krohn's an
18 attorney, but she was -- and she was representing herself,
19 she did not have counsel -- filed the motion for employment
20 of Mr. Nucci. And in the applications and in the
21 declarations that were filed in support of the motion to
22 employ Mr. Nucci to represent the bankruptcy estate, it was
23 made clear that there were multiple claims in the case, that
24 some of the claims undoubtedly were property of the
25 bankruptcy estate, and Mr. Nucci was employed by the

1 bankruptcy estate on a one-third contingent fee.

2 But the applications made clear, and we pointed
3 that out in our briefs, made clear that the claim was going
4 to proceed with Mr. Nype, as well as being a plaintiff, and
5 that any recovery, either on any of the claims whether they
6 belonged to the bankruptcy estate or not, were going to be
7 divided 50/50 between the Las Vegas Land Partners bankruptcy
8 estate and Mr. Nype.

9 And the reason was very clear -- there was very
10 obvious reasons for the trustee wanting to do that. One,
11 the bankruptcy estate of Las Vegas Land Partners was
12 allegedly by the filing a no-asset bankruptcy estate. It
13 had no funds to employ counsel, no funds for investigation.

14 Number two, the lawsuit in the state court was
15 ready for trial. I believe the order authorizing the
16 employment was in the fall of the year and the trial was set
17 for December 30th of that year, and it was quite apparent to
18 everybody that the Las Vegas Land Partners bankruptcy case
19 was filed for the sole purpose of staying that lawsuit.

20 And then, number two, the other part of the reason
21 why the trustee decided to do an intervention in the state
22 court action is because the state court action had been
23 filed several years earlier, and that would give the
24 plaintiffs in the state court action, at least I believe,
25 four additional years to look back at fraudulent transfers,

1 which would be advantageous to the trustee and the
2 bankruptcy estate.

3 THE COURT: Hold it, hold it. We've been through
4 all this. I understand this. I'm simply asking no new
5 documents are presented to me from the court in Nevada, the
6 Bankruptcy Court, that deals specifically with Mr. Nype
7 lifting a stay permitting Mr. Nype's claims to proceed in
8 the State District Court.

9 Your argument that Ms. Krohn hired somebody to
10 represent her in the District Court claims out there, which
11 belonged to the bankruptcy estate, well and good. But Ms.
12 Krohn's not in front of me as a defendant, nor is anybody
13 else.

14 Mr. Nype is arguing that implicitly the retention
15 of a lawyer to represent a trustee in a state court action
16 is implicitly a lifting of the stay to prevent a third party
17 creditor to proceed in that action. That's what's difficult
18 for me to follow.

19 MR. SCHWARTZER: Okay, and I understand. That's
20 why -- and if that's the Court's feelings, then as you
21 stated --

22 THE COURT: No, that's the law. It's not the
23 Court's --

24 MR. SCHWARTZER: Well --

25 THE COURT: Sir, it's not the Court's feelings.

1 MR. SCHWARTZER: Okay.

2 THE COURT: You don't know me, but my feelings
3 don't get hurt often. The law, as I read it -- now other
4 people read it differently -- that Mr. Nype may or may not
5 have a claim that he could have continued in the District
6 Court separate and apart from the trustee's claim.

7 I think Mr. Rosen may disagree with that, but
8 we'll hear from him in a few minutes.

9 But that's not the point. You want me to allow
10 you to go back to Nevada, make your argument to that judge
11 that, for whatever reason the judge should find that Mr.
12 Nype could also proceed or that the action of retaining a
13 lawyer was tantamount to a lifting of the stay. And that
14 judge has every right to make any determination he wants,
15 but that's what you're asking me to allow you to do.

16 MR. SCHWARTZER: Yes, Your Honor.

17 THE COURT: Okay. Now let's say, you've got a lot
18 of issues --

19 MR. SCHWARTZER: And the reason --

20 THE COURT: Hold it. You got a lot of issues.
21 Let me have Mr. Rosen and other parties respond to this
22 discrete question, which is what is the opposition to the
23 argument that the retention of the lawyer to represent the
24 trustee is tantamount to a lifting of the stay and,
25 therefore, Mr. Nype had a stay lifted or, if not, you should

1 go back to the Nevada Bankruptcy Court and let that Court
2 re-issue a new order on this.

3 So first let me ask Mr. Pergament, then I'll ask
4 Mr. Rosen. Mr. Pergament, you put in papers that don't
5 object to this relief, correct?

6 MR. PERGAMENT: That's correct, Your Honor. I
7 thought it was appropriate that he can go back to the State
8 Court in Nevada for that --

9 THE COURT: He's not going back to the State
10 Court.

11 MR. PERGAMENT: The Bankruptcy Court in Nevada to
12 make that determination as to what that judge -- how you
13 infer from that retention order.

14 THE COURT: Why; what analysis could you do? What
15 is the stay that's in place that you analyzed?

16 MR. PERGAMENT: What I looked at, Your Honor, is I
17 looked at what was filed by Mr. Nype's counsel. I looked at
18 the order that was signed by the Bankruptcy Court in Nevada.
19 I did not believe that was clear, but I believe it was that
20 Court that would have to decide.

21 THE COURT: No, but you're a fiduciary to this
22 estate. Tell me why I should and what is stayed to permit
23 him to go back to Nevada? What property of the estate is
24 stayed?

25 MR. PERGAMENT: I don't think the property of the

1 estate is stayed, Your Honor. I think it goes to the
2 dischargeability lawsuit that's before Your Honor. That's
3 what I was looking at.

4 THE COURT: There is no dischargeability because
5 you allowed -- look, because Mr. Liberman got a discharge in
6 this case in some magical way, which has created all kinds
7 of issues, whether you realize it or not. So there is no
8 stay as to anything Mr. Liberman owns or controls in his own
9 name now because he's got a discharge, and once you get a
10 discharge, there's no stay.

11 So the only stay that you're consenting to is stay
12 that is currently property of this estate. I want to know
13 from you as the trustee what's that property, since you put
14 in papers saying you don't object.

15 MR. PERGAMENT: The only property this estate has,
16 Your Honor, that could be liquidated by the estate is the
17 fraudulent conveyance actions that the trustee is
18 investigating. The trustee looked at the real property.

19 THE COURT: What does that have to do with the
20 stay that's in front of me.

21 MR. PERGAMENT: It doesn't. I'm asking --

22 THE COURT: Mr. Pergament, you put papers in --

23 MR. PERGAMENT: I understand, Judge.

24 THE COURT: -- saying you don't object. I want to
25 know what property you looked at to determine that you don't

1 object to the lifting of the stay. What property is it?

2 MR. PERGAMENT: The only property, Your Honor, is
3 the property in Las Vegas that's the subject to the lawsuit
4 that underlies the entire bankruptcy.

5 THE COURT: So while Mr. Rosen says that property,
6 which is property of the estate, may be subject deficient
7 judgment, you apparently don't care because you said, oh,
8 lift the stay, go back to Nevada. You took a bizarre thing
9 (indiscernible) stay the order.

10 MR. PERGAMENT: I don't think that's what I
11 intended, Your Honor.

12 THE COURT: Yeah, well, I don't know what you
13 intended to do.

14 MR. PERGAMENT: Okay.

15 THE COURT: I don't even know why -- never mind.
16 There's other issues in this case. Well, there's no answer
17 there. So, Mr. Rosen, you tell me now. What is the
18 property that you're objecting to for the stay to be lifted?

19 MR. ROSEN: I'm sorry, Your Honor. What is the
20 property?

21 THE COURT: The problem we have is that because
22 this debtor, in the midst of everything else and all the
23 allegations in here, nobody did anything to interfere with
24 the debtor getting a discharge. Any property that that
25 debtor has -- debtor, that Mr. Liberman has, there's no stay

1 on anything. There's no stay anymore because you got a
2 discharge.

3 The only stay that can is employed in this case
4 would be estate property, the Liberman estate's property.
5 I'm trying to figure out what that is. You say I shouldn't
6 lift the stay. I'm trying to get somebody to answer me what
7 property is stayed today.

8 MR. SCHWARTZER: Your Honor, Leonard Schwartzer
9 speaking. There is no --

10 THE COURT: No, no, no, no. I asked Mr. Rosen.
11 You can speak after though.

12 MR. SCHWARTZER: I'm sorry.

13 THE COURT: Thank you.

14 MR. ROSEN: Your Honor, please forgive me, but I
15 just don't understand the question.

16 THE COURT: All right, guys, I've been working on
17 this for two weeks now, and I don't even know what you all
18 are doing so far. We find out that Mr. Liberman gets his
19 discharge. So now, the only property that this Court has
20 jurisdiction over is property of the bankruptcy estate.

21 I asked the trustee, who should know since he
22 doesn't object to the lifting of the stay, what property he
23 analyzed to say he doesn't object. He doesn't know. We're
24 getting some answer that's not to do with anything. Okay,
25 pass through that one.

1 I don't know what property I have jurisdiction
2 over to grant or deny a stay. I don't know there is a stay.
3 They want to go back, as I understand, to Nevada and ask
4 that bankruptcy judge to do something, and then come back
5 here and face the same issues about whether or not there's
6 collateral estoppel on the judgments. Why doesn't somebody
7 just try this case? I don't know, but that's not my
8 problem.

9 The argument -- but the property, there is no
10 property that I can find of the debtor's estate today over
11 which this Court has jurisdiction. I'm just asking somebody
12 to tell me if there is, what is it. Hello? Hello,
13 somebody, anybody?

14 MR. SCHWARTZER: Leonard Schwartzer for Mr. Nype
15 and his company. Your Honor, there's no property of the
16 estate. This litigation doesn't affect the bankruptcy
17 estate as far as the estate's property goes.

18 THE COURT: I actually think you're right. I
19 think you're right. I'm just trying to find somebody who's
20 argued against the lifting of the stay to explain to me why
21 I have to do anything. There is no property that I have
22 jurisdiction over right now, because if the point was to go
23 back to Nevada to generate a claim against Liberman, that
24 clearly could be stayed if he hadn't already gotten his
25 discharge. This guy's got his discharge.

1 And nobody objected, not Mr. Pergament certainly
2 who's the only one who can, to the claim of this 19 million.
3 So I have no idea what you're going to come out of Nevada
4 with that's going to matter to me; it may, it may not. But
5 I certainly can't figure what order I have to enter in this
6 case to do anything. You want to do it? Do it, don't do
7 it. If ultimately somebody comes after you for something,
8 you're the lawyer, make a determination.

9 But I don't know what jurisdiction, what property
10 -- now, Mr. Rosen, you've objected to the lifting of the
11 stay. All I'm trying to find is what's the argument, what
12 property.

13 MR. ROSEN: Well, Your Honor, I don't know that
14 it's the property at issue. I think the problem is Mr. Nype
15 is seeking relief from the automatic stay to go back to the
16 Bankruptcy Court and essentially validate the judgment of
17 the Nevada District Court.

18 THE COURT: No, no, he's not, he's not. That's
19 the crazy thing about this. Nobody's objected --

20 MR. ROSEN: What do you --

21 THE COURT: Mr. Rosen, nobody's objected to the
22 full claim that they filed. They don't need anybody to tell
23 them they're owed 20 million bucks.

24 MR. ROSEN: I agree with that. He doesn't need a
25 judgment against the debtor to pursue his non-

1 dischargeability claim. If he's got a claim, he's got a
2 claim. He can prove it in the context of the
3 dischargeability challenge, but he has no right to go get
4 stay relief, in my opinion at least, and have the Las Vegas
5 Bankruptcy Court somehow retroactively say that there was no
6 stay violation with respect to the Las Vegas bankruptcy.

7 THE COURT: The interesting question here would
8 be: If there was a violation of the stay and damages
9 resulted from that, who would own those damages? Obviously,
10 Mr. Pergament doesn't care because he doesn't raise any
11 objections to this and he's the only one who can.

12 So I don't -- nobody has come forward that has
13 standing to explain to me what automatic stay currently
14 applies. I think they're right. There is -- I'm not
15 issuing any order. There is no -- in my mind, they want to
16 go back to Nevada and have that Judge say this judgment,
17 whatever infirmities the judge from New York may find on a
18 collateral estoppel argument, we're not dealing with; I'm
19 sure he's going to do that.

20 But to the extent the argument is it was stayed at
21 the time, I'm going to rule there was no stay in place, so
22 therefore, he can go back to New York and that argument is
23 off the table, which leaves us pretty much exactly where we
24 are today. Now if they want to do that, it's a free
25 country, you know, okay. I don't know if there are other

1 reasons. I don't know if Mr. Pergament and these creditors
2 have had conversations that ultimately -- I don't know what
3 they're doing. I have no understanding of the actions in
4 this case.

5 But I do believe that I don't have to do anything.
6 I don't have jurisdiction, I don't believe, to prevent them
7 because there's a discharge, so they can't go after --
8 there's no purpose in going after Mr. Liberman because the
9 act occurred prepetition. They're not going anyplace to
10 reaffirm the dollar amount of the claim because nobody's
11 objected to their claims, so they have that.

12 The only reason they're doing it obviously is to
13 reinforce a subsequent motion for summary judgment again
14 brought probably by either the trustee, who may or may not
15 be the right party, but all the other aspects of the case
16 are set in stone right now.

17 Whether Mr. Nype, at the time he filed his claim
18 here, had one or the trustee had the claim and whether the
19 trustee failed to file -- all those things that I mentioned
20 are not going to be changed in Nevada. There's nothing in
21 Nevada that's going to change that.

22 The only issue in Nevada is whether or not there
23 was a stay in place; if there was, whether it was lifted.
24 And I don't know what that stay is on, therefore, I can't
25 tell them not to do it. I don't think there's a violation

1 of the stay on the papers that's in front of me.

2 Now if somebody had raised the question that the
3 damages from the lifting of the stay that we had today,
4 therefore a reason not to send it back, I'm not sure, but
5 nobody raised it. The trustee was the only one; he's not
6 doing anything on this. So I don't see what the issue is
7 here. I really don't.

8 I think there's a lot of energy, but you -- you're
9 good lawyers, you're all good lawyers. If you believe that
10 there is no stay, go back. I'm not finding it -- I can't
11 find any property of this bankruptcy estate that you'd be
12 stayed from going back to Nevada reaffirming the original
13 judgment.

14 You're not changing the dollar amount because that
15 dollar's already -- normally, people want to go back and
16 have a judge set the dollar amount for the claim. That, we
17 don't have here, or they want to bring additional claims
18 that damage the debtor. You can't do that here because this
19 debtor's already gotten his discharge.

20 The only issue in this case is the 523 and, for
21 some reason, nobody just wants to try it. Make a motion in
22 limine on facts. Everybody wants to go through this route.
23 Fine. I got other things to do.

24 MR. SCHWARTZER: Your Honor, could you enter an
25 order saying that the motion is moot because the stay

1 doesn't apply?

2 THE COURT: Nope, because I don't have
3 jurisdiction. I don't have jurisdiction. There's no stay--

4 MR. SCHWARTZER: You have jurisdiction over the
5 stay in the case of Mr. Liberman --

6 THE COURT: Correct.

7 MR. SCHWARTZER: -- to say that this motion is
8 denied because it's moot because there's no stay in effect.

9 THE COURT: I'll tell you what, sir. If you get
10 Mr. Rosen to agree to that -- I guess the trustee can chime
11 in, I don't know -- and everybody consents, fine. I'll do
12 something. It won't be --

13 MR. SCHWARTZER: Well, Your Honor, that leaves my
14 client with the problem that if you don't lift the stay and
15 we go forward in Nevada and Mr. Rosen files a motion to hold
16 my client in contempt for violating the automatic stay
17 against further litigation against the -- oh, not the
18 automatic stay, the post-discharge stay.

19 THE COURT: What do you want me to do, enjoin them
20 from doing that? I'm not going to enjoin them from doing
21 that.

22 MR. SCHWARTZER: No. I would like you to say that
23 the stay doesn't apply and, therefore, the motion is moot.

24 THE COURT: You're a good lawyer and you hit the
25 nail, the proverbial nail on the head, which is your issue,

1 not mine. Once having gotten this discharge, Mr. Rosen and
2 his client have full protection of a discharge.

3 MR. SCHWARTZER: Right.

4 THE COURT: If that impacts what you do in Nevada,
5 that's their claim; they have that claim. If it doesn't,
6 they got no claim.

7 MR. SCHWARTZER: That is why we're in front of you
8 asking you to make that decision beforehand so we're not
9 potentially violating the stay.

10 THE COURT: I'm not going to give you an order
11 that says what you do out there that Mr. Rosen is precluded
12 from protecting his client's rights unless he waives those
13 rights, and I've known him for too long to think he would do
14 that, will you, Mr. Rosen.

15 MR. ROSEN: Right, Judge.

16 MR. SCHWARTZER: So are you granting the motion or
17 denying the motion?

18 THE COURT: I'm not doing anything with the
19 motion. I don't think the motion raised the case of
20 controversy in front of me because there's no property that
21 anybody has shown me over which a stay exists. I understand
22 other issues in the case. It's a complicated fact. Why
23 don't you just try the 523, but you don't want to do that.

24 MR. SCHWARTZER: Because --

25 THE COURT: Sir, that was rhetorical. You have

1 every right --

2 MR. SCHWARTZER: I know.

3 THE COURT: You have every right --

4 MR. SCHWARTZER: But last time, it was a five-day
5 trial, Your Honor, and my client doesn't want to pay for
6 another five-day trial.

7 THE COURT: Ask your local counsel or anyone else
8 here how long this trial will last in front of me. I'll
9 allow you to seek that information from Mr. Spero or anybody
10 else you want in the Second Circuit. How long do you think
11 a trial like in front of Grossman will last, okay? But you
12 have every right to protect your client.

13 Mr. Rosen has every right. His client is sitting
14 with a discharge. Whatever else he may have done and
15 however else that affects the rest of this case, he got it.
16 And if you now move in Nevada and Mr. Rosen creatively can
17 find an area where he believes that's a violation of that
18 discharge, he will move and protect his own client. I can't
19 tell him he can't do that, and there's no order I can sign
20 today that can impact his right to argue post-discharge that
21 you're violating that discharge. Done.

22 MR. SCHWARTZER: Well, then what's the purpose of
23 a motion to lift stay with litigation?

24 THE COURT: In this case?

25 MR. SCHWARTZER: That's exactly what it is. I bet

1 you he should have heard the order --

2 THE COURT: Sir, I've had hundreds or a thousand
3 of this motion. If you ask me in this case the purpose, the
4 answer is none to me. But it's your motion, not mine. I
5 didn't write it. Would I have? No. But it's your motion,
6 it's good papers, it was interesting.

7 MR. SCHWARTZER: Then all I'm asking, if it please
8 the Court to (indiscernible) granted or denied.

9 THE COURT: Sir, I have no basis -- I'm not --
10 we're done with this. I can't have the same argument a
11 hundred times. I know what you want. Why, I'm not sure.
12 But I have no ruling to make where nobody has defined what
13 property there is over which this motion is being made.
14 Nobody can -- the trustee can't tell me; nobody can tell me.

15 And what you're concerned with is an area that I
16 can't be concerned with, which is what happens to Mr.
17 Liberman's rights on a post-discharge injunction, so the
18 Court is basically deciding not to enter any order in this
19 case. You want to try to mandamus me on it, be my guest.
20 Take two years and try it. I'm not --

21 MR. SCHWARTZER: I heard how long it takes. I've
22 taken a few in the District Court, Your Honor, and it's not
23 very useful.

24 THE COURT: Sir, trust me. If I were you, ask
25 your local counsel. We use motion in limine all the time.

1 I don't know what -- I can give people trials. If you have
2 a hundred witnesses, that's one thing. Neither of you guys
3 are going to have any witnesses in my way of looking at it.

4 Mr. Liberman already has his discharge. So what
5 I'm missing in this case, guys, and this is why I wonder
6 what the trustee's involvement is, is I don't think a lot of
7 you believe the bankruptcy is going to accumulate
8 substantial assets. So the only asset that exists should
9 exist, even in controversy, with either the people he's
10 distributed it to, properly or not, and they come back into
11 the estate, which leaves with a trustee who then do whatever
12 he does.

13 But there's stuff going on in this case that I
14 give you more credit than what's in front of me. So I'm
15 seeing, hopefully, just the tip of an iceberg.
16 (Indiscernible), but it doesn't make any sense what you're
17 doing, so that's what I'm doing. I'm not signing any order
18 because I don't think the Court has jurisdiction -- may have
19 jurisdiction, has no basis. If you can find me a law,
20 something in the statute that requires me to enter some form
21 of order, show it to me. Not now.

22 So that's where I am. I've looked at the motion
23 to reconsider. Essentially, what you're arguing is that you
24 want another crack at summary judgment, probably brought by
25 the trustee based on the new view or at least my view and my

1 decision. Can't stop you from doing anything.

2 I'm not granting the motion to reconsider because
3 nothing has changed. I don't find anything that changed,
4 other than I'm now sure the only party who got -- who was
5 empowered to win this case was the trustee, at least the
6 claims that I see.

7 If there are other aspects, there's nothing in the
8 record that has been presented to me that changes my view.
9 So I'm going to deny the motion to reconsider by the rules
10 on the lift stay to the extent there is.

11 I do give you leave, however, if you can find a
12 statute in law in the Bankruptcy Code that does what you
13 want it to do and doesn't -- and I find doesn't impair the
14 subsequent rights of Mr. Liberman for a post-discharge
15 injunction, I'll look at it. There's nothing in front of me
16 on that now. That's where I am, guys.

17 MR. SCHWARTZER: Thank you, Your Honor.

18 THE COURT: All right. I'm going to give you a
19 holding date because I'm sure we're going to do this again.
20 I mean, I actually enjoy it because your papers are very
21 good, both sides, and there are very subtle issues and I
22 think there have been mistakes -- probably some mistakes
23 made to make it more interesting.

24 Madrie, give them a holding date. I'll give you a
25 holding in two weeks out, maybe you can tell me where you

1 are then. If you don't need it, just call chambers and
2 we'll give you a longer one.

3 MR. SCHWARTZER: Your Honor, could you give us a
4 longer one because I'm going to be away next week.

5 THE COURT: Sure. Put it out until the end of
6 February.

7 CLERK: February 23rd at 9:30.

8 THE COURT: We'll use February 23rd as a holding
9 date.

10 MR. SCHWARTZER: Thank you, Your Honor.

11 THE COURT: Thank you, all.

12 MR. ROSEN: Thank you, Judge.

13 MR. PERGAMENT: Thank you, Your Honor.

14 (Whereupon these proceedings were concluded at
15 10:59 AM.)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: January 31, 2022

[& - based]

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